

MEETING
STATE OF CALIFORNIA
SECRETARY OF STATE
VOTING SYSTEMS PANEL

SECRETARY OF STATE
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Reported by:

Alan Meade

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

PANEL MEMBERS

Mark Kyle, Chair
Marc Carrel, Vice-Chair
Tony Miller, Special Projects
Caren Daniels-Meade, Chief Political Reform Division
Bernard Soriano, Chief, Information and Technology Division
Terri Carbaugh, Assistant Secretary of State, Communications
John Mott-Smith, Chief, Elections Division

STAFF

Dawn M. Mehlhaff, Deputy Chief
Michael Wagaman, Elections Analyst

ALSO PRESENT

Kevin Shelley, California Secretary of State

Kim Alexander, California Voter Foundation
Greg Dinger, GreyBeard Design Group
Karl Dolk, R & G Associates, LLC
Deborah (Debby) Hensch, Registrar of Voters
Frank Kaplan, Diebold Election Systems, Inc.
Bob Urosovich, Diebold Election Systems, Inc.

Jim March
Robert Kibrick
Dennis Paull
Joseph Holder

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1 P R O C E E D I N G S

2 MR. KYLE: Good afternoon. My name is Mark Kyle.
3 I am Under Secretary of State and Chair of the Voting
4 Systems Procedure Panel. We'll get started now. Thank you
5 very much for waiting. Sorry for the short delay and
6 welcome to all of you who are here who don't have to be and
7 to those who do want to be.

8 I believe we have two agenda items.

9 Let me just make an announcement that we have one
10 position on the Panel that we would normally have one other
11 person if I'm not mistaken.

12 John Gutierrez who several weeks ago was named
13 Interim Director of the DMV so our congratulations and
14 sympathy to John in his new position. I don't envy him but
15 I know it's a challenge and he's certainly the right person
16 to take on the task but we lose him and consequently we
17 don't have him for today and we're working on replacing him
18 but we have enough to go forward with today and make an
19 informed decision I believe.

20 We have two agenda items, if I can find my agenda.
21 The first is on Hart Intercivic and the review of an eSlate
22 electronic voting system, System 3, and then old business,
23 the carryover from last month's meeting regarding the
24 Diebold Election Systems and the system that was under
25 review at that time.

1 So why don't we go ahead and get started on the
2 Hart Intercivic and if I could have the staff report please.

3 I have a number of comments up here for later so I
4 will find out if these are relative to Hart or to both.

5 So staff, if you please, go ahead and make your
6 report

7 MS. MEHLHAFF: Absolutely.

8 The first item on the agenda is Hart Intercivic's
9 eSlate Voting System 3.0. As you know, this -- an earlier
10 version of this was approved in March 2002 for use in
11 California elections. This is essentially a modification to
12 that previously certified system. They did add one
13 additional component to this that you have not seen before
14 which is called Rally. So I will go through and lay out the
15 modifications. Most of them are fairly minor fixes they
16 found throughout the process or additional reporting
17 functions that some of their customers had asked for.

18 The system is comprised of BOSS, which is their
19 Ballot Origination Software System. Tally -- Rally is their
20 new component. Ballot Now servo, the eSlate firmware and
21 the JBC firmware. I'll kind of go through these one by one.

22 The Ballot Origination Software System, that
23 essentially enables the user, which would be the county
24 election official, to define and think about styles. This
25 system allows for the creation of the paper ballot system

1 for absentees as well as electronic systems for the eSlate
2 DRE device.

3 The changes to the BOSS system for this particular
4 version are in front of you today. They did some changes to
5 kind of fix some of the aspects of the multilanguage. They
6 had some issues with their original reports with some of
7 foreign language characters wrapping to the next line and so
8 they made some fixes on those for the import-export
9 functions.

10 The most significant thing that they did in this
11 current version -- the system that was before you previously
12 did support foreign language capabilities but the way in
13 which that happened as some of you may remember is the
14 county would input the information and then export it out
15 and the vendor would have to assist them in the translations
16 and getting that reprogrammed back in and those characters
17 and they've advanced that function to give the county
18 election official the control over the translation. So the
19 counties can put their information in, they can basically
20 put it into a separate database, transport that to their
21 translation service or services, and then import that
22 information back in and it gives the county the capability
23 that if they do find misspelling, they can automatically fix
24 it without having to export the entire file out as they
25 would have had to have done in the previous situation. So

1 it gives the county -- if they have translation services in
2 house, they can translate it themselves. It gives them the
3 full capability with the multiple language capabilities that
4 they do have with English now so they just enhance their
5 database structure essentially for that.

6 This did some modifications on their ballot
7 preview screens so that when the election official is
8 creating the ballot, they can actually pull up what certain
9 ballot type would look like and they can print that, so some
10 user interfaces in terms of the county user useability.

11 They did some California rotation. They did a
12 separate file to allow for our California rotation that's
13 actually included on their entire system now. So it's
14 included with other states as well. They don't have to use
15 it, but it's specific to California.

16 In terms of the Precinct Voting System which is
17 the eSlate which is actual voting unit and also the Judge's
18 Booth Controller which is the device that sits on the pole
19 worker's desk that they control and they give the voter
20 their access number that they then input into the DRE. So
21 those are the two components that reside at the precinct,
22 the JBC and the eSlate.

23 Essentially they didn't really make a lot of
24 changes to those two issues or those two components. They
25 made some changes in terms of the text that comes up on the

1 JBC to instruct the polling place workers.

2 They did a built-in printer modification but
3 essentially there's not a lot of changes with that as you'll
4 see in the staff report. The hardware and firmware was
5 basically untouched in this modification.

6 The Tally is actually the vote tabulation
7 software. That's what actually accepts the results and
8 tabulates early voting and election day votes including
9 absentee. Tally resides at the central location at the
10 County Registrar's Office.

11 The major changes with that, they changed some of
12 standard reporting forms and the interfaces associated with
13 that. They did offer the capability this time to kind of do
14 some different customized printing reports. The vendor has
15 established a suite of reports that the user can use, the
16 county election official can generate. They also gave him
17 the capability on this to -- it's essentially a Crystal
18 report if you're familiar with that, but they can actually
19 pick and choose fields and generate a customized report if
20 they wanted to. If someone called and said, hey, we want to
21 know, you know, "X," "Y" and "Z," they could essentially
22 create that custom report after they're done with the
23 process. So the vendor did add that functionality, kind of
24 as a response to some of their customer requests.

25 Ballot Now is the absentee system. It's actually

1 the paper ballot that the jurisdiction can print and uses it
2 with a scanner.

3 They did some minor changes to this. One of the
4 major ones is they, for the -- when they do the resolve
5 boards, when the ballots are scanned in, you know, if
6 there's an overvote or an undervote issue, the jurisdiction
7 has the option to stop on all of those and actually have
8 that ballot come up on the screen so that they would have
9 their resolution board of three or four individuals and they
10 would see that and -- they did some color coding so if it's
11 an overvote, that comes up and it's highlighted in green and
12 the resolution board would then look at that and say, yes,
13 that's actually an overvote or that's an undervote and they
14 would resolve it as a team as occurs now in the county
15 election official but this -- they have some color coding so
16 they could look at all and say, yeah, those are all
17 undervotes, let's just go through those and we're going to
18 do them undervotes and we'll let this other team deal with
19 overvotes and that's a local issue. But they did add the
20 color coding feature which some of their jurisdictions have
21 asked them to.

22 SERVO is a management tool that the jurisdiction
23 can choose to use or not to use. It is certified for use in
24 California when they originally brought it forward. It's
25 essentially a duplicate, redundant management technique that

1 they can copy their MBB, their Mobile Ballot Box cards and
2 they can track serial numbers, they can track the actual
3 slate devices -- where they are. They can recreate ballot
4 images off of that if something happens to one of the mobile
5 ballot boxes or on eSlate so it's just an extra step in the
6 process that they can use to go back on to verify or to
7 recreate something if something is damaged or lost.

8 Rally is the new function and what Rally enables
9 them to do is it's essentially a subpart of the Tally
10 system. And Rally will enable jurisdictions, large
11 jurisdictions, if they have remote locations to have 100
12 precincts deliver the mobile ballot box cards to a remote
13 location if they have five remote reporting locations and to
14 upload the cards via that location so there would be county
15 staff, but let's say those five locations, 100 precincts
16 would go to "A," 100 would go to "B." And they would
17 actually transmit those unofficial results to the county
18 elections official on election night for early -- earlier
19 recording. All of those mobile ballot boxes would still be
20 transported to the election official that day on election
21 day for use in the official final canvass but it's just an
22 early reporting function that will allow them to transmit
23 remotely from, you know, specified, secure locations.

24 In terms of testing, the eSlate system 3.0 was
25 tested by federal ITAs, Independent Testing Authorities. It

1 was tested by Wyle for the firmware and hardware and it did
2 successfully complete testing there and Ciber was the ITA
3 authority that did the software. They passed successfully
4 both of them. The State's technical consultant along with
5 staff tested the complete system over a two- to three-day
6 duration and the system successfully met all of the State's
7 requirements. It's recommended by the State's technical
8 consultant and staff that the Hart System 3.0 be certified
9 for use in California with the standard conditions that the
10 city and county has to use the appropriate State-approved
11 procedures, no changes or modifications to the voting system
12 shall be made until the Secretary of State has been notified
13 in writing and has determined the extent of those changes,
14 and that the county -- or the jurisdiction that uses it is
15 subject to the Voting Rights Act of 1965.

16 MR. KYLE: Any further comment from staff?

17 Any questions from the panel?

18 Mark.

19 MR. CARREL: I notice in your --

20 I don't know if you can hear me.

21 It mentions several languages, Russian and
22 Armenian to be specific, in the Ballot Origination Software
23 System. I'm intrigued by that but is there a suggestion
24 that -- well, first let me back up.

25 How many counties -- there is only one county that

1 I know of that uses the Hart system in California currently?

2 MS. MEHLHAFF: Correct.

3 MR. CARREL: Orange County?

4 MS. MEHLHAFF: Correct.

5 MR. CARREL: Are they plan -- are these
6 modifications that can be made to a current system or is
7 this a replacement for a current system? So is this a plan
8 to go -- for Orange County to upgrade their system to this?

9 MS. MEHLHAFF: Yes, Orange County does plan to
10 upgrade to the 3.0 if you choose to certify and plan to use
11 the 3.0 in the upcoming March election.

12 MR. CARREL: Okay.

13 MS. MEHLHAFF: In terms of the two languages, the
14 vendor, those don't necessarily apply to California because
15 they are not mandated languages in this State, however,
16 those are the languages that the vendor underwent testing
17 for at the federal level and we also did review them when we
18 were looking at the rest of the languages. It was two
19 additional. We looked at it just for completeness sake.

20 MR. CARREL: I actually like it because the
21 Russian and Armenian communities are large in certain
22 polling -- in certain precincts of the State and I know
23 there is no federal requirement or State requirement to
24 produce voter materials in those languages. I don't know if
25 those languages are highlighted in Orange County but I think

1 it -- I think it's wise to allow counties to have that
2 option and I think it's useful.

3 The other thing -- there was a question regarding,
4 um --

5 You want to ask a question?

6 MS. CARBAUGH: Yeah.

7 I'm just hoping, Dawn, that you can go into a
8 little more detail about Rally and the process through which
9 the votes would be transmitted to the county office.

10 MS. MEHLHAFF: Okay.

11 The mobile ballot box, as essentially as it shows
12 in your report -- there's a little diagram of it --that is
13 basically the data card that is at the county elections
14 office. They will essentially download all of the specific
15 election information to that card and that's the card that
16 actually goes into the JBC unit, the unit that sits on the
17 desk of the pole worker. And on that card, that's what has
18 the different ballot formats, the language, and all those
19 capabilities on it so that that will appear on the eSlate
20 voting device. When that voter goes to vote, it will pull
21 up their correct ballot style.

22 So at the close of poles those cards are removed
23 from the JBC and the way that it occurs now in Orange
24 County, for example, if they were using their existing
25 system or chose not to use Rally, they would transport those

1 MBBs, those Mobile Ballot Box cards in patches to the
2 elections office at the close of poles after they have, you
3 know, reconciled all of their reports just as DRE counties
4 do now. They remove those cards and those are transported
5 and that is what is put into Tally and the data is read off
6 of those cards and, you know, put into the appropriate
7 database if there needs to be reconciliation on the case of
8 -- I guess it really doesn't apply here because that would
9 be a Ballot Now issue in terms of overvotes. ESlate
10 wouldn't allow that.

11 But Rally is kind of in-between those two phases
12 so it allows if it's a large jurisdiction where it's going
13 to take a long time for polling places to actually get those
14 cards to the one central location and if they are looking at
15 wanting to speed up their unofficial results on election
16 night, they can choose to set up remote count locations.
17 Let's say they choose to do five, you know, in opposite
18 corners of the county and one in the central. They can
19 instead of telling those polling places to transmit those
20 mobile ballot boxes to the one central location, to the
21 county office, they can assign them to transmit those to one
22 of the remote locations. They would physically take those
23 cards to that location and that location county staff would
24 be there. So it would look very similar to the county
25 elections office in terms of the set up, the card readers,

1 the election system, and they would be running this Rally
2 program which doesn't include all of functionality of Tally
3 because Tally includes much more in terms of databases and
4 election definition information.

5 Rally basically just has the capability to read
6 those mobile ballot boxes electronically, to upload them in
7 the database at that Rally station, and then Tally at the
8 central location has the capability to call to that remote
9 location to get the result. Rally can never make the
10 connection in. Just -- it's a security function. The
11 central location always has to call out to that location in
12 order to grab the information to bring it back.

13 MS. CARBAUGH: And this is done over a phone line?
14 It's not --

15 MS. MEHLHAFF: It would be whatever method the
16 county would use but it would be either a secure phone line
17 -- is what they do in most cases.

18 MS. CARBAUGH: But what are the other cases?

19 MS. MEHLHAFF: I believe that they can do a
20 secure, direct, you know, cable connection and the vendor
21 does not allow for them to do, you know, over the internet
22 and nor do we at the state level.

23 So they would transmit -- some counties do this.
24 I know like Riverside with their system, they will do -- on
25 election day they use a different system but they'll

1 transmit the results of their -- you know, from a remote
2 location in the main mill over phone lines or over secure
3 network connections.

4 MR. KYLE: Thank you.

5 Any other questions?

6 MR. CARREL: I do have one more.

7 I see -- it says in here it talks about --
8 supports both paper ballots and electronic voting, and later
9 on it talks about the ability to print and laser printers
10 connected to print ballots and reports. Given the recent
11 directive from the Secretary regarding the implementation of
12 a voter verified paper trail, these upgrades at least don't
13 have any added capacity for printing either directly from
14 the eSlate itself or anything like that so this doesn't
15 include any upgrades regarding that; correct?

16 MS. MEHLHAFF: In terms of voter verifiable? No,
17 it does not. The vendor -- this system does not have it.
18 The vendor did show us a prototype when we were testing it.
19 They are exploring different options with their current
20 system but, no, this one does not include that.

21 MR. CARREL: Thank you.

22 MR. KYLE: Any comments from vendors?

23 Any comments from the public on this?

24 Do you -- please come to the podium.

25 It's Mr. March?

1 MR. MARCH: Yes. Thank you.

2 MR. KYLE: And this has to do with this system?

3 MR. MARCH: Yes, with the certification process
4 for this system. Yes.

5 My name is Jim March. I'm an activist in honest
6 voting and local to Sacramento.

7 My concern is this. This oversight process and
8 the staff reports we've just heard were prepared by people
9 who know that they can probably get a job in industry upon
10 leaving here. A huge number of people from this office,
11 including several of the vendors -- vendor reps are from
12 this office. One of the people from this office, Lou
13 Deider, had a private conversation with a Diebold rep who
14 wrote down the transcript of that conversation November
15 2001. Lou Deider cast doubt on the securities
16 implementation of the ES and S PCMCAs cards. Well I filed a
17 Public Records Act request with this office asking for any
18 evidence that Lou Deider as part of his official job
19 capacity at -- in November of 2001 when he was an employee
20 of your division had ever submitted any written comments or
21 any description --

22 MR. KYLE: Mr. March, I'm going to interrupt at
23 this point in time. Several panel members are raising
24 concern of the relevancy of your comments --

25 MR. MARCH: It is relevant.

1 MR. KYLE: Not to the Hart Intercivic
2 certification --

3 MR. MARCH: It is --

4 MR. KYLE: -- that's before us.

5 MR. MARCH: There are reasons to believe that the
6 certification process, the oversight process, has been
7 corrupted by industry links by the ability to get jobs in
8 industry after leaving the Secretary of State's office. In
9 one case we appear to have evidence that one of your
10 employees turned his knowledge of a security flaw from a
11 vendor into a job with that vendor instead of reporting the
12 error to your office. Now if that kind of thing is
13 happening, then we the people of California cannot trust the
14 oversight process that your agency is performing.

15 MR. KYLE: Okay.

16 Mr. March --

17 MR. MARCH: And that applies directly to Hart
18 Intercivic and every other vendor --

19 MR. KYLE: Okay.

20 MR. MARCH: -- that your agency is reviewing.

21 MR. KYLE: Your comments are in the record and I
22 appreciate them. Since they are not more specific to Hart
23 Intercivic I'm going to ask you to sit down. I will --

24 MR. MARCH: I've made my point.

25 MR. KYLE: -- ask you if you want to, as you've

1 done in the past, if you'd like to write down the comments
2 specific to this -- I don't know if they're included in your
3 other comments --

4 MR. MARCH: They pretty much are.

5 MR. KYLE: -- then we would enter those into the
6 record as well.

7 MR. MARCH: All right.

8 MR. KYLE: Thank you.

9 MR. MARCH: Thank you.

10 MR. CARREL: I would just add regarding that that
11 there has been an examination by the Secretary into conflict
12 of interest and I think he could speak more to it than I
13 could as this occurred while I was away but there is a
14 crackdown in this office on notifying staff about what the
15 conflict of interest rules are, clarifying it and providing
16 much stricter guidelines regarding staff and this agency
17 unlike what has happened in the past.

18 MR. MARCH: Um-hum.

19 MR. CARREL: So I think that the Secretary in many
20 ways has addressed those concerns and we are -- at least I
21 am satisfied that the conflicts that may have existed in the
22 past or potentials for conflict that may have existed in the
23 past could not occur again.

24 MR. KYLE: The -- specifically what Mr. Carrel is
25 referring to is incompatibility statement that is necessary

1 for employment in the agency has been reviewed, has been
2 upgraded, strengthened and is currently in the process with
3 the Department of Personnel Administration for this
4 modifications and the various steps that have to go into
5 effect addressing the kinds of concerns that you raise
6 specifically which will be implemented as soon as we get
7 through this process with the DPA.

8 (Whereupon there was a voice from the audience)

9 MR. KYLE: So, again, we're not going to have the
10 dialogue in the audience, Mr. March, but your concerns are
11 duly noted as Mr. Carrel pointed out and noted. Those
12 concerns have been brought to our attention before, are
13 legitimate and we've addressed a lot of those and
14 strengthened the incompatibility activities statement
15 required for employment in the Secretary of State's agency.

16 Okay.

17 One more question from the audience relevant to
18 Hart Intercivic, please.

19 Please identify yourself.

20 MR. KIBRICK: My name is Robert Kibrick. I am a
21 registered voter in California. I live in Santa Cruz,
22 California.

23 My question is specifically in regard to the Hart
24 Intercivic.

25 Earlier this month the Secretary of State office

1 in Ohio issued a report in which four different vendors'
2 machines were evaluated including the Hart Intercivic. This
3 was a security audit of electronic voting machines. In that
4 study they identified a total of 10 separate risks
5 associated with the Hart Intercivic machine. They rated
6 four of those risks to be a high risk, one medium risk and
7 five low risk items.

8 My question to this panel is have the security
9 deficiencies that were identified in the State of Ohio
10 report with the Hart Intercivic machine been corrected for
11 the units that are here in California and if they have not
12 been corrected, why are we proceeding with the certified new
13 versions of these machines?

14 MR. KYLE: I would ask staff if there's an answer
15 to that question.

16 MS. MEHLHAFF: Our consultant -- our technical
17 consultant actually reviewed the Ohio report and worked with
18 both Hart and the ITA in terms of trying to review all those
19 concerns that were brought up in the Ohio report.

20 The system 3.0 that's before you implements the
21 majority of those changes that were raised in the Ohio
22 report. The high risk areas that were just mentioned
23 basically assume that an individual can gain unauthorized
24 access to the central location and to some of the units. So
25 most of those are addressed procedurally at the local level

1 in terms of security procedures and how to, you know, ensure
2 that their systems are protected and locked down and we did
3 actually have Hart indicate -- modify their current
4 California procedures to accommodate some of the new
5 security provisions in terms of, you know, the password
6 changes and secure locations of the equipment. But, yes,
7 our consultant did work extensively with IT and the vendor
8 on ensuring that those changes were corrected either in the
9 system or procedurally for this current system.

10 MR. CARREL: So you're suggesting that all of the
11 concerns expressed in the Ohio report are addressed either
12 technically or procedurally by Hart?

13 MS. MEHLHAFF: Technically or procedurally, yes.
14 Not all were addressed technically but the ones that were
15 not we had them modify their procedures to accommodate for
16 those.

17 MR. CARREL: And Orange County which is the only
18 county using this, are they aware of those technical --
19 those procedural changes with regard to Hart's procedures
20 for 3.0?

21 MS. MEHLHAFF: Once the system is certified, they
22 will be made aware within the procedures on what has been
23 changed and what they need to change in terms of -- most of
24 it was the password functionality to gain access and yes
25 they will be made aware of that.

1 MR. CARREL: And it's also regarding security with
2 regard to co-worker training so that their -- Does it also
3 influence the ability of -- or the need for different
4 training of co-workers with regard to its security and
5 access to the central system as well?

6 MS. MEHLHAFF: The procedures weren't changed.
7 The standard language, you know, was something to the effect
8 of -- you know, you need to ensure that you have secure
9 access and that only, you know, individuals have basically
10 the lowest level of security access that they need and at
11 the polling place with this current system they have access
12 to the JBC and the eSlate and so there's no connectivity
13 back to the central location. But the --

14 MR. CARREL: And the central location is managed
15 by the election officials, not by co-workers?

16 MS. MEHLHAFF: Correct.

17 MR. CARREL: I see. Okay.

18 So the security issue in some ways is having
19 elections officials make sure that only identified elect --
20 people working for the county or people working on the
21 system have access to that system during the election;
22 correct?

23 MS. MEHLHAFF: Correct.

24 So you're is not going to give everyone full
25 access to the system, you're going to give select people who

1 need the full access and then you might give certain people
2 a lower level access. Let's say if they're just doing the
3 translation part of it, they don't necessarily need access
4 to the entire system.

5 MR. CARREL: I see.

6 Thank you.

7 MR. KIBRICK: Thank you.

8 To follow up on that has there been any
9 independent analysis done of this effort on the part of the
10 vendor and your consultant to address the issues identified
11 in the Ohio report? Is there any public record our document
12 that illustrates how the risks identified in the Ohio report
13 have been resolved for the machines that are currently going
14 to be used in California?

15 MR. CARREL: I guess what you're asking is has our
16 technical consultant done his own analysis of the system and
17 if what I'm hearing from staff is correct, the technical
18 consultant did analyze the Ohio report, did work with vendor
19 to analyze the issues and the problems and while he may not
20 have put it down on paper, the staff is reporting to us now
21 that all of the concerns expressed by the Ohio report have
22 been addressed by Hart either through changes in their --
23 technically to the system or procedural in -- or changes to
24 their procedures which go to how the county manages the
25 system. So I'm confident that given the degree to which had

1 our technical consultant examines systems for us that this
2 was done appropriately.

3 MR. KYLE: Thank you Mr. Kibrick.

4 MR. KIBRICK: Thank you.

5 MR. CARREL: I would move to support staff
6 recommendation.

7 MR. MILLER: Mr. Chairman, I have one question if
8 I could interject at this point.

9 Reading the technical consultant's report,
10 Mr. Freman, he certainly indicates that 3.0 complies with
11 California requirements and is good to go but he doesn't
12 indicate four recommendations, advisos, and I was wondering
13 whether those had been addressed and handled or should they
14 be included in our recommendations that the Secretary has
15 filed. It's on page 7 of his report.

16 MS. MEHLHAFF: The only one that -- and we can
17 certainly list it as a stipulation in there, certification.
18 The C on that which is the auto vote should not be used and
19 again the consultant actually apologized. His report is
20 handwritten. His computer crashed on him and so this is
21 only what he could do in order to get it to us in a timely
22 fashion.

23 MR. MILLER: This is not a good thing, a computer
24 crashing.

25 MS. MEHLHAFF: The auto vote program is -- the

1 reason it is not mentioned in terms of the certification and
2 the staff do not bring it up as a stipulation, the auto vote
3 basically is a program that the vendor uses as a diagnostic
4 tool, a testing tool, where it would just automatically vote
5 and generate a test script to test the system. It is not
6 part of the system. It is kind of a utility function that
7 the vendor has developed that they use as they develop and
8 test to make sure the system is doing what it's doing. In
9 testing, we run our own test script and we test ballots
10 according to certain procedures that we have established in
11 this State. We also just have the vendor do some auto
12 voting to look at some of the logic associated with it and
13 we did find a problem with their auto vote program. And so
14 we went back and we actually traced it back and found where
15 that was and so that's why the technical consultant brought
16 that up because that was an error that we found during the
17 testing process although it's not part of the system or
18 related to it he felt it was his responsibility to report
19 that. But we did find that but it's not related to the 3.0
20 system. It's a utility tool that the vendor uses and his
21 stipulation is here is that the auto vote utility should not
22 be used in California to generate auto vote testing for
23 logic and accuracy.

24 MR. MILLER: Would it be appropriate to put that
25 in the recommended certification or --

1 MS. MEHLHAFF: We certainly can do so.

2 MR. KYLE: Are you making that as a -- we have a
3 motion --

4 MR. CARREL: I'll modify my motion to incorporate
5 that auto votes should not be used for elections in
6 California.

7 MR. MILLER: I'll second the motion if it hasn't
8 been seconded yet.

9 MR. KYLE: All those in favor --

10 MR. CARREL: Actually, I would change it from
11 "should not" to "can not" or "shall not."

12 MR. KYLE: Okay.

13 So let's restate the motion.

14 MR. CARREL: Actually, I'm looking here at his
15 recommendations -- of the consultant and I guess why don't I
16 modify my motion to incorporate those recommendations which
17 is to accept staff report including the recommendations of
18 the consultant which is that Ballot Now write-ins should not
19 be permitted to wrap to the top of the next column. Ballot
20 Now preview -- what is this "siren"?

21 MR. KYLE: "Screen."

22 MS. MEHLHAFF: "Screen."

23 MR. CARREL: Oh, "screen."

24 MS. MEHLHAFF: Ballot Now preview screen is --

25 MR. CARREL: Sometimes when you write it instead

1 of type it.

2 Ballot Now -- the preview screen is not --

3 Can you read that for me? "Defined format."

4 MS. MEHLHAFF: It's "not define format in
5 validation."

6 MR. CARREL: Okay.

7 MS. MEHLHAFF: It was a summary screen --

8 MR. CARREL: Okay.

9 MS. MEHLHAFF: -- that he wasn't happy with how it
10 appeared.

11 MR. CARREL: The auto vote may not be or shall not
12 be used for official elections in California. Computers
13 where BOSS, Tally or Ballot Now -- are used shall not have
14 other software installed other than the minimum software
15 required on their systems.

16 So I would incorporate those recommendations into
17 my motion to approve Hart.

18 MR. KYLE: Okay.

19 So just to restate the motion, it's to accept the
20 Hart eSlate voting 3.0 per the staff's recommendation
21 including standards, terms and conditions that were
22 articulated earlier along with the technical consultant's
23 recommendations read into the record by you that can be
24 found on pages 7 and 8, articulated on pages 7 and 8.

25 And Tony if I'm not mistaken you made a second to

1 that.

2 MR. MILLER: And I second the motion as stated.

3 MR. KYLE: All those in favor?

4 All those opposed?

5 Abstains?

6 The ayes have it. The motion passes.

7 Okay. We'll go on to the second part item of the
8 agenda.

9 And Terri Carbaugh if I understand correctly you
10 are recusing yourself because of not a direct conflict of
11 interest but a potential so that --

12 MS. CARBAUGH: Perceived.

13 MR. KYLE: -- there is no perceived impropriety,
14 you're excusing yourself.

15 Thank you very much for participating earlier.

16 Can we take a one-second break folks.

17 And Will, can I ask you to come to the stand.

18 THE REPORTER: Do you want to go off the record?

19 MR. KYLE: Yeah. Just go off the record for one
20 minute.

21 (Whereupon there was a brief recess.)

22 MR. KYLE: All right. Thank you.

23 So, starting over again. We are in part 2, Review
24 of Diebold Voting Systems. This is old business carried
25 over from the last meeting about a month ago, on November

1 10th I believe, as well as the November 3rd meeting so it's
2 a continuation of that.

3 Thank you, Marc, for a little elbow room there.

4 MR. CARREL: I'm just getting closer to the
5 microphone.

6 MR. KYLE: And I also just wanted to mention that
7 those folks who want to say something, there's this color
8 card on the table up front and it's just a lot more helpful
9 and also for the record to have who you are and that way we
10 can also include you on our e-mails so that can be noticed
11 at these meetings as well as other interesting information
12 coming out of the agency. So if you want to speak and you
13 haven't filled one of these out, please do so. They're back
14 on the table there.

15 So, I think we can -- at the last meeting we
16 directed staff to engage in an audit. Several conditions
17 were set relative to the certification of the system and I
18 think we're all interested in hearing what the report of the
19 staff is and the results of the audit.

20 So, Dawn, if you wouldn't mind starting I'd
21 appreciate that.

22 MS. MEHLHAFF: Sure.

23 Time to go backwards. As you recall, on October
24 29th it came to the attention of our office that Diebold
25 potentially could have installed uncertified -- State

1 uncertified software in some of its client counties.

2 The Voting Systems of Procedures Panel tabled the
3 Diebold agenda item on November 3rd pending further review.
4 On November 10th you chose to go ahead and certify the
5 Diebold TSx system based on the successful completion of
6 federal and State testing. However you did place the
7 following three conditions upon them at that time. The
8 first condition was that Diebold must provide funds for an
9 inventory of the hardware, firmware and software of its
10 client counties use in California.

11 And I can tell you Karl Dolk is here with me
12 sitting to my right. He is the Product Manager from R&G who
13 did conduct the review and then also Gene Rich, one of the
14 partners with R&G is here as well. And then Karl, I
15 believe, will be the one presenting the report but they are
16 both here to answer any questions that you may have
17 regarding the review.

18 In terms of number 1, the prime request, on
19 December 8th Diebold did provide us with a check in the
20 amount of \$75,000 to cover the costs of the review.

21 The second condition that you placed upon them at
22 the time was that Diebold must cooperate in the conduct of
23 the review and with this office and with the independent
24 team.

25 Diebold did meet with Secretary of State staff as

1 well as the team of consultants on November 17th regarding
2 the operation of their systems, regarding how the
3 consultants should go about obtaining the information once
4 they actually got to the counties in terms of where they
5 need to look on the firmware, hardware and software and
6 tried to walk them through that process so that they could
7 learn on it prior to going out to the counties.

8 Diebold did provide all of the materials that were
9 requested by staff in regards to the review. Unfortunately
10 we did receive some of the documentation late last week
11 because of the -- I guess a miscommunication on their end in
12 terms of the documentation so we are still reviewing some of
13 the release notes and the changes that we received last
14 Thursday so our technical consultant is reviewing those and
15 we still need to have a conversation about ITAs in terms of
16 the extent of those modifications of software.

17 The third condition that you placed upon them at
18 the last hearing was that they must participate at today's
19 hearing and attend, and Diebold responded both verbally and
20 in writing prior to today that they would be here and
21 participate and they are here. I do see them in the
22 audience.

23 In terms of the review, the team of independent
24 consultants conducted the reviews between November 20th and
25 December 5th of the 17 California counties that are

1 currently using some type of a Diebold product, whether it's
2 the optical scan or DRE or even just their DREs for early
3 voting.

4 And so with that I think I will turn it over to
5 Karl and he can actually walk you through exactly what they
6 found.

7 MR. DOLK: Thank you.

8 We appreciate the opportunity to present our
9 report.

10 We were engaged to complete a review of the
11 Diebold Voting System components in 17 counties and that
12 review included election management software. We're looking
13 for the -- what system they were using, what version they
14 were using. The central count optical scan units, what
15 equipment they were using and what firmware version they
16 were using. Precinct count optical scan use, what equipment
17 they were using, what version -- firmware version they were
18 using and touch screen units, again, what equipment they
19 were using including serial numbers and what firmware
20 version they were using.

21 In order to approach this review since we did not
22 -- had not been out to the counties before, we got
23 information from the Secretary of State's office. We also
24 got information from Diebold as Dawn has stated and the
25 Secretary of State's office was kind enough to send out a

1 voting system information form to the 17 counties. Eight of
2 those counties returned that providing information on their
3 systems, their equipment and their firmware.

4 We met with the Secretary of State staff early on
5 to explain how we were going to do this and to get feedback
6 from them to make sure we did this correctly.

7 We met with Diebold and Diebold representatives
8 were kind enough to bring their machines, optical scan
9 units, their touch screen units, their computer with it had
10 also the software on it and they explained to us how they
11 operated and how we could look into them and see what
12 versions they were and any questions we had to answer. And
13 then we also reviewed the counties' information that they
14 provided for the eight counties that provided it at the
15 time.

16 Subsequent to that we created a county on-site
17 review questionnaire which we used as a tool to make sure we
18 covered everything when we were out on site and also to make
19 sure that since there were three of us going to different
20 counties alone, each to different counties, we wanted to
21 make sure that we were consistent in our review and in the
22 summarization of our results.

23 We used statistically valid sample since some of
24 the counties had some fairly substantial size -- quantities
25 I should say of equipment. For instance, Alameda County had

1 approximately four hundred -- I mean four thousand touch
2 screen units. We used a sample for those if we could. At
3 any time that the sample number came up to be greater than
4 50 percent of the total number of units, we looked at all
5 units just to make sure we were doing it correctly.

6 We grouped the counties into geographical areas,
7 north, central, south. They fit pretty well. There were
8 six in the north, there were six in the south and there were
9 five in the central.

10 And then we conducted a review of the Alameda
11 County first and all three of us went to that review. There
12 was a Diebold representative present and -- as well as Dawn
13 was present for the Secretary of State so that we could test
14 out our questionnaire. We could do that review first. And
15 we came back and made some modifications of the
16 questionnaire based on results of that review.

17 We then made on-site appointments and all of our
18 appointments were done actually on the 24th through the 5th
19 of December so it's a very short time frame, quite a bit of
20 distance to go and to do those.

21 The on-site reviews consist of interview with a
22 county representative regarding the Diebold components in
23 use, to find out what they were using, what they were using
24 them for, when they had used them, when they -- to the
25 extent they had the knowledge or obtained the knowledge when

1 they were installed, what the upgrades had been, those kinds
2 of things.

3 We then looked at the election management
4 software. There is obviously one in each county. We looked
5 at all 17.

6 We did a review of the central count optical scan
7 units when they existed, when they were used and we did 100
8 percent of those in each county that we found them.

9 We did a review of the precinct count optical scan
10 units. We sampled those and as I said in some cases the
11 sample amount was greater than 50 percent so we reviewed all
12 of them.

13 Same for the touch screen units. We sampled those
14 and if it was greater than 50 percent we reviewed all of
15 them. So that was a pretty extensive review by the three of
16 us.

17 We found that the counties were very receptive to
18 having us there. The assistance we gained from the counties
19 was incredible. They at times lined up all those in order
20 for us. As soon as I reviewed one, it was gone and another
21 one replaced it. I mean, it was pretty amazing and the
22 reviews, because of that, took less time than we
23 anticipated.

24 We reviewed all of the -- excuse me. We
25 summarized and compiled the data by county and where down in

1 the report does have all the data by county in the back of
2 the report and then we summarized overall comments that we
3 saw, overall findings and issues we found.

4 So I won't go through the county but I will go
5 through the overall but to the extent you have any questions
6 about a county we could certainly look at that as that time
7 comes.

8 I want to touch on some of the smaller findings we
9 had first. We found that three counties -- as I said,
10 Diebold provided us with what -- with a listing of what
11 equipment was used in each county. We found that three
12 counties used Diebold software different than the version
13 that Diebold indicated they were using so there are three
14 differences there.

15 We found is that two counties use touch screen
16 firmware that was different than what Diebold had supplied
17 us with in terms of version and we found that one county
18 reported that they are using optical scan far more different
19 than the Diebold firmware indicated. We say "reported"
20 because we were unable to confirm all four units of the
21 optical scan units were in the Diebold plant in Texas
22 getting repaired so we were not able to see them.

23 And we found that six counties had a total of 16
24 components unavailable for review that were included either
25 in our 100 percent review or our sample. Eight of those

1 just wouldn't turn on, even when plugged in they wouldn't
2 turn on and eight of them were in Texas at the Diebold plant
3 being repaired.

4 We also found that one county had three different
5 versions of touch screen firmware being used in the county.
6 It was Los Angeles. Los Angeles indicated to us they were
7 not using all three, they were using just the most recent
8 version. The other ones had not been updated because they
9 had not needed the touch screen units in the last elections
10 so they had not yet upgraded them.

11 And one other county had one version different
12 than they thought they were using and that was they were
13 going to talk to Diebold about getting that one changed.

14 So. So to move to the issues of a kind of a --
15 maybe a little bit bigger issue, we found that we asked for
16 and the Secretary of State staff told us what had been
17 certified in the State of California and that was version
18 11717 for software -- for the election management software
19 and that nothing had been certified since then.

20 We also found that version 11818 had been
21 conditionally certified which had been mentioned earlier and
22 -- by the State.

23 We found that versions installed in use in the
24 counties were 11720, 11722, 11723, 11818, 11818.102. Those
25 different versions were in use by the counties and those

1 versions were used in the November and October elections in
2 a couple cases only in one or the other because there either
3 wasn't a November election or they used something else
4 during one of the elections.

5 We also got information from Diebold that came
6 through the Secretary of State's office about what was
7 federally qualified versions. Ciber Letters, the federal
8 consultant. We found that it appears that 11722, 11723,
9 11818 are all federally qualified and also 11717. We found
10 that those are most of the versions being used in the State
11 of California although there were 11720 is being used in two
12 counties and 11818102 is being used in one county.

13 Thirteen counties used currently installed
14 software in both the October, November elections. And I say
15 "currently installed" because our -- what we were looking at
16 was what was there when we were there which of course was
17 after the election between November 24th and December 5th.
18 But we asked the question in thirteen of the counties -- use
19 the current installed software in both the October, November
20 elections.

21 Mendocino County only used it in November because
22 they used a Vote-o-matic in October.

23 San Luis Obispo used an all mail hand count
24 November but they did use it in October, and Modock and
25 Lassen did not have November elections but they both used

1 their currently installed software in the October elections.

2 And in five counties -- currently use software
3 version -- just as a bit of information, 11818 that is not
4 yet fully certified, four were used in October, November
5 elections and as I said Mendocino used it in the November
6 election only.

7 And then we have in our report a complete
8 breakdown by county of information also and basically that
9 includes who we talked with, the locations of that
10 interview, the locations of where the equivalent was located
11 or housed, what components were used, the sample and our
12 results of that sample and then any findings and conclusions
13 that were specific to the county.

14 And with that, I think I'll leave it open for
15 questions.

16 MR. KYLE: Thank you very much, Karl, for your
17 report.

18 I just want to acknowledge that the Secretary of
19 State, Kevin Shelley, has joined us and we'd like to ask
20 you, Mr. Shelley whether you would like to have the staff
21 continue or -- and observe. We're about to go into report
22 or if there is anything you'd like to address the audience.

23 CALIFORNIA SECRETARY OF STATE KEVIN SHELLEY

24 SECRETARY SHELLEY: Members of the Voting Systems
25 Panel and ladies and gentlemen behind me, I understand from

1 staff that I am, as Secretary of State, breaking precedent
2 in appearing before this panel. I appreciate all the sage
3 advice that you give me and recommendations that you make
4 but I felt it appropriate in the circumstance of the item
5 that you're hearing or discussing at the moment to break
6 precedent. Let me just -- if you will indulge me for a
7 moment, members, let's take a minute or two because it is --
8 my concern is beyond the individual item that is being
9 discussed as applies to Diebold and recommendations to be
10 made in their regard. It's much larger than that and so
11 just for a moment, you know -- the core of our American
12 democracy, members, is the right to vote and implicit in
13 that right is the notion that that vote be private, that
14 vote be secure and that vote be counted as it was intended
15 when it was cast by the voter and I think what we're
16 encountering is a pivotal moment in our democracy where all
17 of that is being called into question. The privacy of the
18 vote, the security of the vote and the accuracy of the vote
19 and that troubles me and it should trouble you.

20 Now an initial presentation was just made on the
21 findings of the report and I want to thank you very much for
22 the conducting of the study and the important review that
23 you provided and soon I know that VSP will be making -- I
24 guess asking questions and then making some recommendations
25 but there's a number of things that this report detailed

1 that is very troubling, that there were unqualified uses of
2 software that were not approved by the federal government,
3 there were uncertified uses of software that were not
4 certified by the State government and that this was done in
5 a number of instances and that's deeply troubling because
6 it's in violation of the Election Code. That there were lax
7 accounting procedures, whether it be by counties or whether
8 it be by this very agency where we have not had a
9 sufficiently extensive mechanism to, on a regular basis,
10 assess what systems are in use.

11 I think the audit demonstrates that on the county
12 level --

13 (CELL PHONE IN AUDIENCE PLAYS SONG)

14 SECRETARY SHELLEY: This is reinforcing my
15 comments on American democracy, a little musical ensemble in
16 the background.

17 -- on the county level that the physical security
18 of the voting was sound and that the county registrars and
19 their excellent staff are doing a very good job in ensuring
20 that security but that the technical security is less sound
21 and that the procedures that should be and must be in place
22 at the county level are not sufficiently in place now.

23 At the same time we bear responsibility if we
24 don't have -- "we" being the Secretary of State office as
25 the entity charged with the responsibility under Election

1 Code -- to certify systems if we're not on a consistent and
2 regular basis assessing what software systems are in place.
3 I believe we have the finest election staff of any secretary
4 of state operation in the country, no disrespect to the
5 other 49. Having said that, for every state election
6 program it's a new era and we must adjust our procedures,
7 our assessment mechanisms, our approaches towards ensuring
8 the privacy, accuracy and security and integrity of those
9 votes.

10 Now I know a number of recommendations will be
11 made today. I look forward to implementing the
12 recommendations of this panel to provide from this office's
13 perspective stronger mechanisms in place to address that, be
14 it by annual assessments, be it regular auditing, be it spot
15 checks, be it a number of things that came out of the
16 recommendations of the Touch Screen Task Force.

17 You know, it's very interesting, recently when I
18 made the decision to require a paper audit trail that a
19 number of county officials, very respectfully to them, and a
20 number of vendors, many of whom are represented behind me,
21 said it wasn't necessary, said the machinery was secure. At
22 the same time a number of those within the community --
23 voter advocacy community have oftentimes alleged Armageddon if
24 we don't make immediate changes. You know, hey, I don't
25 know who's right. I'm like an average voter. I don't know.

1 And because I don't know I want the confidence that a paper
2 trail provides and like an average voter I want the
3 confidence that a stronger assessment mechanism at the state
4 level will provide. And like the average voter, I want the
5 confidence the stronger procedures at the county level will
6 ensure the accuracy, integrity and privacy of those votes.

7 And once again, the right to vote is the most
8 precious demonstration of our democracy members. We must
9 take it seriously, we must cherish it, and all of us at the
10 county level, at this office and in the election vendor
11 community must act accordingly.

12 Now the audit is not complete. We don't have all
13 of findings as yet. We don't know what's occurred
14 comprehensively and I would hope that the end result
15 sanction that we suggested we might make today pursuant to
16 this hearing taking place won't be the suggestion of
17 decertification of Diebold Systems. I would hope that won't
18 be the case. I certainly hope that won't be the case with
19 other vendors as well. But if we find that there are gross
20 discrepancies and violations, I am prepared to go down that
21 road and so this needs to be taken very, very seriously.

22 With that I thank you for your time and I'll let
23 you continue.

24 (Applause.)

25 MR. KYLE: Thank you Mr. Secretary.

1 MR. CARREL: If I may ask questions?

2 MR. KYLE: Yes.

3 MR. CARREL: Okay.

4 MR. KYLE: Hold on one second.

5 MR. CARREL: I want to echo the Secretary's
6 comments and the questions that I ask -- he summed up some
7 of what you summed up in your findings and I just want to
8 clarify so that it's clear here. You're saying that the
9 last State certified version is 11717 on the system;
10 correct?

11 MR. DOLK: That's information we have received
12 from the Secretary of State's office, correct.

13 MR. CARREL: Okay.

14 And every -- 11717 you did not find on any system?

15 MR. DOLK: No.

16 MR. CARREL: So you found all versions that were
17 on every system that you examined, all 17 systems in 17
18 counties you found versions later than 11717?

19 MR. DOLK: The assumption is they're later, 1720,
20 22, 23, 1818, yes.

21 MR. CARREL: Right.

22 And based on the information that you determined
23 and based on either from us or in the counties, the
24 installation dates of all of those systems were prior to any
25 state certification; correct?

1 MR. DOLK: We didn't -- I can't say yes to that
2 necessarily. We -- we went back and looked -- the
3 installation dates and we found that many of the counties
4 did not -- were not able to tell us partly because some of
5 the people who needed to be there to tell us that were not
6 there on the day we were there due to the shortened time
7 frame, not able to tell us when they were initially
8 installed. However we found that some of them had been
9 stalled -- installed several versions back and that it had
10 been upgraded several times and what we found is that the
11 versions currently in use were in use in October or November
12 also.

13 MR. CARREL: So every version that you saw was
14 used at least October or November or both?

15 MR. DOLK: That's correct.

16 MR. CARREL: Okay.

17 MR. DOLK: That's the understanding from what the
18 county's representative told us.

19 MR. CARREL: And every version that's been
20 installed is a more recent version since 11717 which would
21 lead me to believe that every county that you inspected had
22 versions that were not certified because the only version
23 since then that's been certified is 11818 which has been
24 conditionally -- and that was conditional on the 10th and
25 the election was November 4th.

1 MR. DOLK: Yes. And four counties had 11818.

2 MR. CARREL: Okay.

3 Now -- so that's State certification of the
4 systems.

5 Federal qualification. You do not determine
6 information regarding federal qualification which is the
7 equivalent -- which is their testing approval process for
8 two versions; correct?

9 MR. DOLK: What we got from Diebold is the Ciber
10 letters, the Ciber being the contractor who reviews those
11 for the federal government, recommending that the systems be
12 qualified. We got that for 1722, 23 and 1818 and we did not
13 find that for 1720 or 11818 102.

14 MR. CARREL: Okay. Well, I'll reserve comment
15 then because if don't have it then I guess I have to ask
16 Diebold themselves whether they have it and they have not
17 provided it to us.

18 The next question, there were instances in your
19 audit report where there were discrepancies between the
20 information you received from Diebold and the information
21 that you actually determined in the audit was being used on
22 the machines; correct?

23 MR. DOLK: That's correct.

24 MR. CARREL: And those discrepancies, were they
25 significant discrepancies or were they minor discrepancies

1 in your opinion with regard to just the next version or were
2 they completely off?

3 MR. DOLK: Well, in all but one case they were
4 just one version offer, 1722 versus 1723, that kind of
5 thing. One of the firmwares was -- had the old number 2.00G
6 versus we found a new number 2.0.10 so that's the only one
7 that probably had any distance.

8 MR. CARREL: Now, did you cross-check that
9 information with logs kept by those counties to see if they
10 had the correct information?

11 MR. DOLK: We did not. We found that we tried on
12 a couple of occasions to find logs but in many cases they
13 did not have logs on that and in some cases we did find logs
14 so it just depended on who was available to tell us whether
15 the logs were available or not.

16 MR. CARREL: So -- I guess I should ask people why
17 -- I mean, I don't know whether it was an incident of the
18 county installing something the people had provided them and
19 thus they didn't know or whether Diebold installed it and
20 they didn't keep accurate records and I'm not clear on that
21 but clearly there's a concern there.

22 You're talking about logs. Do you believe that
23 there were logs kept in every county even if you weren't
24 able to see the logs in every county?

25 MR. DOLK: No, not in every county. I believe

1 there are logs kept in many of the counties. Some of the
2 counties showed them to us. Other counties, the people who
3 they thought could provide the logs -- they thought could
4 provide the logs were not available and in some counties it
5 was probably clear they didn't have logs.

6 MR. CARREL: Okay.

7 You identified in a cover letter that "we did not
8 observe nor did we request documentation specific to
9 tracking of units on loan or otherwise off site."

10 You stated that when you did testing -- when you
11 did the audits in certain counties, there were machines that
12 were missing. Was that -- what were the reasons that they
13 gave for the machines being missing.

14 MR. DOLK: The items tested -- there were two
15 reasons given -- well, excuse me. In "missing," they were
16 all out for repair. All eight of them that we were missing
17 were out for repair of the items tested.

18 MR. CARREL: Okay.

19 I have heard in a discussion with your colleague
20 about possibly other reasons --

21 MR. DOLK: Well, there's -- there's one that
22 wasn't included in our test but was -- we were informed of
23 that was on loan to Diebold.

24 MR. CARREL: On loan. Okay.

25 MR. DOLK: Yeah.

1 MR. CARREL: Were there records kept about either
2 the machine on loan or the machines that were out for repair
3 and I assume they were out for repair with people and their
4 technicians.

5 MR. DOLK: That's correct.

6 The machine that was on loan -- there was no
7 record but the warehouse person was well aware of it. The
8 machines that were in for repair, I think -- I'm not exactly
9 sure of the number. I believe it was just half. Four of
10 them, there were records kept of them being there and the
11 other four there were not really records. I mean, the
12 person was aware of it but that --

13 MR. CARREL: Okay.

14 MR. DOLK: -- there wasn't any written
15 documentation.

16 MR. CARREL: And with regard to those machines, is
17 there any -- this may go to staff as opposed to you, Karl --
18 is there any procedure in place when a machine goes out on
19 loan to be tested to make sure that no other software has
20 been installed and nothing's been removed so that it's in
21 the same position that it should have been so that, for
22 instance, the demonstration machine did have the demo
23 installed on it which could have interfered if it were used
24 in an election.

25 MS. MEHLHAFF: Currently there is nothing at the

1 State level in terms of procedures within the individual
2 voting system procedures that would disallow that or even
3 allow it. That's a local jurisdiction issue. We may wish
4 to look at that as we, you know, throughout this process we
5 have been looking at our own practices internally and that
6 may be one of the things we want to add to our list of
7 modifications we want to make to our --

8 MR. CARREL: Right.

9 MS. MEHLHAFF: -- practices.

10 MR. CARREL: I mean, I recognize over many, many
11 years vendors and counties have to build a close
12 relationship because they're working together on very tight
13 time frames to program and work on laying out ballots,
14 working on the translations, doing a lot of technical things
15 in a short time frame for elections so there's a trust built
16 up between them but I'm concerned that at some times the
17 trust may be misplaced and not that all vendors are bad or
18 any vendors are bad per se but that if machines are
19 installed and it could happen inadvertently that
20 demonstrates the software placed on a machine or a machine
21 had to be scrubbed and they didn't put it up to the same
22 level. You have machines being sent back that are not in
23 the same position that they were previously and that may
24 have an impact with regard to the tabulation or with the
25 machine working properly. And so I'm concerned that there's

1 not proper documentation of those and not proper testing.

2 I -- that's all I have at this point. Maybe I'll
3 come up with other ones later but that's all I have right
4 now.

5 MR. KYLE: Well, we still have staff report on
6 some other aspects but let's continue with questions for the
7 R&G audit report.

8 MR. SORIANO: I have a question.

9 In the report you mentioned that Los Angeles
10 County had different versions of the firmware installed.
11 And just skimming through all of the other counties that you
12 reported on I wanted to see if that inconsistency in the
13 firmware also related to the software in any of the
14 counties. In other words, did any county have different
15 versions of the software installed within the county itself?

16 MR. DOLK: The software, each county has one
17 software package installed and we found three versions that
18 were inconsistent with which Diebold thought that they had
19 installed in the list that they provide to us so there were
20 three versions that were different there but there is one
21 software package in each county versus the equipment and
22 firmware, of course, there can be up to four thousand or so.

23 MR. SORIANO: Okay.

24 But in terms of the software itself being
25 installed on different units inconsistently, you did not

1 find an incidence of that?

2 MR. DOLK: In fact we found that the software is
3 installed on a single unit in each county.

4 MR. SORIANO: Okay.

5 MR. DOLK: So --

6 MR. SORIANO: Thank you.

7 MR. DOLK: All 17 counties.

8 MR. KYLE: Any other questions from the panel?

9 MR. MOTT-SMITH: I have one or two.

10 MR. KYLE: John.

11 MR. MOTT-SMITH: Karl, your letter that
12 accompanies your report indicates a couple of suggestions
13 for further review and one of those is to include specific
14 questions about policies and procedures. Can you expand on
15 that in terms of what you mean by that?

16 MR. DOLK: Well, we found a couple things when we
17 were visiting. One is that -- and I'm going to move a
18 little bit beyond your question there. One, we found that
19 we were not able to get some information because of the
20 timing issue and it was a very short turnaround time frame
21 and in fact the county registrars were in Sacramento for a
22 week of that time frame and it made difficult for us to
23 obtain some information so one of the things we'd like, of
24 course, is to have a little more time so if we can make sure
25 the appropriate people are present. Along with that,

1 because of that we were not always able to obtain logs if
2 they were present. We were not able to really in many cases
3 understand what their previous versions were because the
4 right people weren't necessarily present and we were also
5 not able to really understand exactly how they -- to look at
6 exactly how they took in and out the machines. The question
7 previously was asked how they do account for their machines,
8 how they account for their firmware and all that kind of
9 thing. We weren't really able to do that to a great extent
10 partly due to time, partly due to the fact that the right
11 people weren't always present to do that. So when we're
12 talking about that, we're talking about what kinds of
13 procedures do they use when the machines come in and to
14 inventory, to warehouse those machines and when the machines
15 are upgraded and/or modified/repaired, what procedures they
16 have to get those in and out and make sure what was expected
17 to be done is done. And what kind of logs do they keep in
18 terms of loans, in terms of repairs, in terms of loans to --
19 frankly, we didn't mention to other counties because the
20 counties do loan to other counties too to assist the other
21 counties that don't have the machines -- enough machines.
22 So what kinds of things go on there. And that's the kind of
23 policies and procedures we're primarily talking about.

24 MR. MOTT-SMITH: Thank you.

25 Second question. Did you observe in any of the

1 counties that you went to that there was an independent
2 technical advisory group that was organized -- I know you
3 weren't charged with doing so, I'm just curious whether you
4 saw in any of your counties a -- some form of a technical
5 oversight committee or some involvement from the independent
6 sector of the community that participated in the voting
7 system security accounting process?

8 MR. DOLK: I did not. I did the central counties
9 and I did not see it. That doesn't mean it didn't exist
10 because I did not ask that question and I did not talk to
11 the other two consultants about whether they saw that so I
12 could find that out whether they saw that but I didn't ask
13 the question so I can't answer you right now but I'll find
14 out from the other two whether they in fact did.

15 MR. MOTT-SMITH: Thank you.

16 MR. KYLE: Any more questions?

17 MR. CARREL: I do have one more question.

18 With regard to the installation of 117.20 is
19 unqualified 117.22, 117.23, 117 point -- or 11818 and so on,
20 do you have any idea specifically -- I mean we got release
21 notes and I'm sure you saw the release notes but do you -- I
22 looked at it and, I mean, it's like looking at a foreign
23 language when I'm looking at these. Do you have -- have you
24 analyzed or been able to analyze and -- to determine whether
25 the changes made in the different versions, succeeding

1 versions were significant changes or minor changes? Have
2 you been able to make that summation.

3 MR. DOLK: We have not done that nor were we
4 requested to do that but with did get the release notes and
5 I must say that Joceline looked at them but not in terms of
6 analyzing what the changes were so we did not do that.

7 MR. CARREL: Okay.

8 I guess I'll wait for staff reports to hear about
9 that further.

10 MR. DOLK: Okay.

11 MR. CARREL: Thank you.

12 MR. KYLE: Dawn, would you mind proceeding with
13 the remainder of the staff report, please.

14 MS. MEHLHAFF: Sure. I can actually mark -- if
15 you want me to answer that question in terms of the release
16 notes. I wasn't going to cover that in detail in the rest
17 of the report, I was going to actually jump into the
18 recommendations. But the release notes, I looked at them,
19 our technical consultant looked at them and he has not -- I
20 mean since I'm not the State's technical consultant, we
21 actually -- we -- it would be put into wait for him to
22 actually review those and to discuss it with Diebold or the
23 ITAs to get any questions answered that he might have but I
24 did look at them and essentially the way that it works with
25 revision numbers is the 117 series, so if it's 11717, 11720,

1 24, when you stay within the 117, normally when there's
2 revisions made, if they're minor they tend to stay within
3 that 117 series. It's when they start to make something
4 significant that the ITAs look at and say, okay, now you're
5 starting to get a little bit too into changes, that's when
6 they'll bump it to the next version number which would be
7 the 118. And so, you know, we're at 11818 now, you know,
8 theoretically they can go 11819 or 11820 and keep going and
9 when they get to the point where they're starting to make
10 more substantive changes in the eyes of the ITAs, then
11 they'll bump to 119.

12 MR. CARREL: So, with regard to that, then it's
13 likely that -- not definite because we have to talk to our
14 technical consultants --

15 MS. MEHLHAFF: Correct.

16 MR. CARREL: -- that most of the changes preceding
17 at the 117 range were minor modifications based on the
18 earlier preceding version of 17 but when we moved to the 18
19 range they are more significant and thus in need of much --
20 they get a lot more and they were much more significant
21 changes. And so essentially what you're saying is five
22 counties had a much more significant version installed prior
23 to certification than the other counties did -- not to put
24 words in your mouth.

25 MR. KYLE: If your assumption is correct, though,

1 because right now we don't know if I understand what
2 you're --

3 MS. MEHLHAFF: Right. Our technical consultant
4 has not provided a summary of what those changes are. I'm
5 just speaking --

6 MR. KYLE: I understand.

7 MS. MEHLHAFF: -- in general terms and that's
8 basically how the revisions of software happen. So if they
9 have 11717 and they find out that they're using that in
10 another state or let's say if they're using that in Los
11 Angeles and they spelled Los Angeles wrong, they have to go
12 in and make that change. Well, that could be 11718 just
13 because they changed the spelling of the county name so is
14 that a minor change? You know, the ITA would think so and
15 that's why it would just kind of go -- it would still stay
16 in a 117 version.

17 Let's say there was an issue with the actual
18 tabulation or something. That would be more significant and
19 that would not stay within that 117 series. That would then
20 bump it to, you know, the 118 or the 119.

21 MR. CARREL: Right.

22 Do we have any -- our technical consultant has a
23 copy of the release notes?

24 MS. MEHLHAFF: Yes, he does.

25 MR. CARREL: Do we have any idea when he's going

1 to be able to complete his review and provide us a report?

2 MS. MEHLHAFF: I think it's a couple days.

3 Mr. Mott-Smith spoke with him last.

4 MR. CARREL: Okay.

5 So we don't have that information today?

6 MS. MEHLHAFF: No, we don't.

7 MR. CARREL: Okay.

8 Thank you.

9 MR. KYLE: So some of the information, Dawn, you
10 said you were about to go into recommendations. I just want
11 to stay on the report for a minute. The -- you mentioned
12 that the release notes -- we've got some of the data that we
13 requested later than we would have liked so that's part of
14 the reason that our technical consultant is still doing the
15 review?

16 MS. MEHLHAFF: Right.

17 We received the summaries on December 11th which
18 was last Thursday and he was back east at a national voting
19 systems conference so he's been reviewing them and has not
20 been able to turn that around for today.

21 MR. KYLE: Just for clarification then in my mind,
22 what more needs to be done in terms of either data
23 collection or data analysis by us in conjunction with
24 whomever and identify those parties whom the whomevers might
25 be.

1 MS. MEHLHAFF: The significant piece right now are
2 those release notes in terms of digesting those and
3 providing us with a summary. You know, we did receive a
4 summary from Diebold. Our consultant needs to look at that
5 and basically, as Marc said, he couldn't understand them
6 when he looked at them so our consultant needs to go through
7 those and say, you know, one through five are basically just
8 stylistic changes to report. Number six in this release,
9 that was a little bit, you know, more meaty and this is what
10 was done --

11 MR. KYLE: That would be something our consultant
12 would do in conjunction with Diebold?

13 MS. MEHLHAFF: He would do that. If he had
14 questions he would work either through the ITA who would
15 know those or also the vendor to get clarification.

16 MR. KYLE: Okay.

17 MS. MEHLHAFF: So we are leaning on that component
18 to determine -- you know, at this point I can't tell you if
19 you ask me, you know, what's the difference between 11717
20 and 11720, I can't tell you the significance of those
21 differences at this point.

22 MR. KYLE: Do you have anything further for the
23 staff report before we go into recommendations?

24 MS. MEHLHAFF: I mean, I could talk about, you
25 know, our internal review or I could touch on that right

1 before I do the recommendation.

2 MR. KYLE: Why don't you go ahead and do that
3 because that -- one of the things we did is we asked Diebold
4 to be present so they could participate and aside from
5 sitting here and listening I know that you had a few
6 questions, Mr. Carrel, so maybe we can have some of those
7 addressed so before you do that though I'd like to hear what
8 else you might be able to report, Dawn.

9 MS. MEHLHAFF: As a result of this, you know, we
10 took a hard look at our internal procedures and looked at
11 what we have been doing over the historical time line. You
12 know, it's basically in summary all -- we went back and we
13 dug through voting system certification that essentially we
14 found in, you know, fact, to as far as we can find, you
15 know, across decades, that there's always been a clause in
16 certifications that have indicated that no modifications to
17 the system, which include software, could be made until our
18 office has been notified. However, we have never been
19 necessarily proactive in that approach and it's always been
20 -- as part of the certification it's always been on the
21 vendor to come to us and to indicate to us when there was a
22 change and so there was never a mechanism in place where we
23 were actively going out and looking at the software out
24 there, you know, double checking with the vendors to make
25 sure that, hey, just so you know your certification says you

1 have to tell us this. And so it was basically a trust
2 relationship where they had to provide that information to
3 us and so, you know, that's certainly something that we need
4 to change and some of the recommendations in here will
5 address that.

6 One of the other things that we determined is that
7 within the staff position there has been turnover to a
8 certain degree, sometimes annually. I mean I got this
9 position by default actually a little over a year ago and so
10 we're trying to look at that and to try and establish some
11 sort of institutional knowledge where you have the same
12 person doing it year after year and we're actually talking
13 to R&G in terms of trying to serve a role in that so that we
14 have the continuity. You know, you talk to the vendors and
15 they'll tell you that, you know, I do things one way and
16 someone before me did something else and that -- sometimes I
17 don't think they like the way I do it but that's another
18 story. So we're trying to look at things like that in terms
19 of how we make it the same. I mean, since I've been doing
20 this we capture the version numbers. Historically we didn't
21 do that and part of that was, as the Secretary mentioned,
22 voting systems have changed. Vendors would come to us with
23 a package and they would say, this is our voting system "X"
24 and we would say, okay. It's composed of hardware,
25 firmware, software. We would test all components of "X" and

1 we would certify voting system "X." We would not specify
2 that it's this firm, or this hardware, this software because
3 when they would make a change they would bring in voting
4 system "Y" and they didn't make changes as fast as they do
5 now just with the changing technology and the changes in
6 election law and the demand of their customers. And so some
7 vendors will do components as, you know, Diebold, they have
8 their GEMS kind of stands alone, their optical scan can
9 stand alone and their DRE can stand alone. The system that
10 was before you previously which was Hart, they tend to
11 cluster their entire system so if they make a change to one
12 component, they just -- they rename the whole thing which
13 was system 3.0. They don't really change components and
14 just bring that component forward. Some vendors do and some
15 vendors don't and so the landscape has changed drastically
16 in the last several years and so we have looked extensively
17 at ways to make our process better and more effective.

18 MR. KYLE: Thanks, Dawn.

19 And as I said before, before you go into the
20 recommendation phase I want to keep it on the question and
21 answer data collection phase. I'd like to ask the
22 appropriate Diebold representative, I'm not sure -- I have a
23 question who that might be. If you mind coming forward and
24 identifying yourself for the record and I know we have at
25 least one panelist with a few questions and maybe help shed

1 some light on this.

2 MR. KAPLAN: My name is Frank Kaplan. I'm the
3 Western Region Manager for Diebold and with me is Bob
4 Urosovich, the president of our company.

5 MR. KYLE: Thank you both for being here today.

6 Mr. Carrel, you have a few questions and I believe
7 they are more appropriately addressed to the vendor.

8 MR. CARREL: Thank you, Mr. Chair.

9 Mr. Kaplan, Mr. Urosovich, thank you for coming
10 today.

11 I -- the first question I have is -- and this goes
12 to a month ago when I was here and we had heard that your
13 software might have been installed in one county and now --
14 uncertified software might have been installed in one county
15 and now we're hearing based on this audit report that
16 uncertified software was installed in every county that you
17 -- that you have a relationship -- that is using your
18 equipment. That's 17 counties. That's much more
19 disconcerting to me today than it was a month ago.

20 Second, I noticed based on the audit report that
21 in three counties, Trinity and Lassen version 1717 point --
22 or 11717.20 and in Los Angeles 11818.102 has versions that
23 are not qualified, not federally qualified or State
24 certified. And so I would just ask the question, how did
25 this happen?

1 MR. KAPLAN: Okay. Let me take the Los Angeles
2 case first.

3 Los Angeles in the governor's recall race came to
4 us at a late date and said with all the candidates, with all
5 -- with our punch card that we're continuing to use, et
6 cetera, they used the touch screen for early voting in Los
7 Angeles. They had about forty something thousand that voted
8 on that. They came and said, we would like to put our punch
9 position numbers as they rotate within the county amongst
10 their whatever, 21, 22 ledge districts on the touch screen
11 and have them come up on the screen so that whatever it was
12 matched the punch position at the -- on their punch card.

13 As staff has said, that -- the way we do our
14 system becomes a -- certainly it was a change and it is a
15 change what -- nothing in software is trivial, but it is a
16 change that is done within that software and that's when Los
17 Angeles went to specific for them to add that punch position
18 on there.

19 Now, as far as -- so that is how that -- that's
20 what the difference is in Los Angeles.

21 MR. CARREL: When did that occur? Do you know?

22 MR. KAPLAN: Before the October election.

23 MR. CARREL: Sometime in --

24 MR. KAPLAN: September. September.

25 MR. CARREL: Okay.

1 MR. KAPLAN: I don't have an exact date.

2 MR. CARREL: Okay.

3 MR. KAPLAN: And we absolutely understand and
4 obviously would never at this point acknowledge the customer
5 or the county on that. We would -- with whatever procedures
6 are set up would have gone and had that reviewed, however
7 that would have been done, but that's how that happened. We
8 had a request and that's how we added that. They wanted to
9 identify the punch position.

10 In Lassen and Trinity, as -- Bob, you have the
11 notes there.

12 MR. UROSOVICH: First of all, let me --

13 Thanks Frank --

14 MR. KAPLAN: Yeah.

15 MR. UROSOVICH: -- for the Los Angeles -- Frank is
16 more familiar with Los Angeles than I am.

17 I'd like to make a statement first of all to start
18 with the -- to answer your question directly. Our version
19 control procedures are not in line with the State. We were
20 negligent from our company standpoint not to notify the
21 State of the last two digits of a version control figure.
22 For that, we -- I'm here obviously to make sure that that
23 does not happen in the future.

24 But to go right to your question on the 1720
25 issues, the base software that was certified in the State of

1 California was 171717. We were requested and mandated by
2 the State to, because of a voter group two procedure that
3 came out specifically for California that would allow
4 declared and undeclared candidates to -- or voters to
5 declare or undeclare during the voting process. That
6 recommendation came to us after we had federally certified
7 and certified with the State of California 11717 in October.
8 We were requested in December to change that base software
9 to handle voter group two. That went to 17 20. I'm going
10 to get -- I'm, like you, I can look at these release notes
11 all day and understand it. The difference -- the
12 fundamental difference was that was the case with voter
13 group two. We installed that in two counties because of the
14 March election that was upcoming.

15 As we move through the process we also realized to
16 accommodate not only those counties that are on optical scan
17 but those counties that also manage to run touch screens in
18 accordance with that that we would have to make another
19 enhancement in the process to make sure that that was done
20 by March as well.

21 Therefore, when we came out of the ITA
22 certification process, the number ended up being 22 instead
23 of 20. We neglected, quite frankly, to go back to the 17 20
24 group and move them to 17 22 probably, and I'll have to look
25 at our records, probably because of shortness in time prior

1 to the election and there was no need to update them from a
2 technical standpoint because they did not use touch screens
3 in those elections.

4 MR. CARREL: Well, so what you're saying is you
5 installed it when you sent it in for federal qualification,
6 when it came back after the give and take between the vendor
7 and the qualifying authority that this needs to be changed
8 and you would change it and send it back and this needs to
9 be added and they would send it back and so the version that
10 came out with the number 117 -- 22?

11 MR. UROSOVICH: Two, yes.

12 MR. CARREL: Twenty-two is the version that you
13 initially submitted as 11720 but as it comes out at 11722
14 it's not the same version, there are differences to it based
15 on the qualification testing; correct?

16 MR. KAPLAN: Sometimes that could be a bug that's
17 caught but it changes.

18 MR. UROSOVICH: To answer your question, yeah,
19 there could be some very minor things but in our control
20 number and the ITAs, they do change that.

21 MR. CARREL: Okay.

22 MR. KAPLAN: And that's what the release notes
23 will show.

24 MR. CARREL: Okay.

25 I'll tell you, when we had the meeting with -- I

1 guess I was with you, Mr. Kaplan and some others from your
2 company, I was led to believe that while you may have
3 installed uncertified software, you by no means had
4 installed unqualified software. And now the report of the
5 audit says that even if it was a minor change for the 135 in
6 Los Angeles -- I'll give you that one but I'll have my
7 technical advisor check and make sure that I'm giving you
8 that one. But 11720 you prepared and installed it in two
9 counties knowing that you had to go through federal
10 qualification testing and you hadn't gone through federal
11 qualification testing so I'm still -- I still have the
12 question, why did that happen? Why did you knowingly
13 install it when you also were submitting the federal
14 qualification testing and had not received the
15 qualification?

16 MR. KAPLAN: Sometimes, and this was in October of
17 2001 so I, you know, two and a half years -- a couple years
18 ago. Sometimes we do have counties that, like is occurring
19 now, candidate filings ending, people wanting to be laying
20 out ballots, et cetera. I don't have the specifics of the
21 two counties. They were two smaller counties, Lassen and
22 Trinity. And the only thing I can say is it slipped through
23 our own auditing and cracks there.

24 MR. CARREL: Okay.

25 So not only did you install it -- and you don't

1 have an answer as to why -- before it was qualified by the
2 feds but you then never went back and reinstalled the actual
3 qualified version and that, the initial version that has
4 never seen the light of day by the feds or has never been
5 approved in that version by the feds or by the State, ever
6 even seen by the State until recently is still -- has been
7 used in the March 2002 election, the November 2002 election,
8 the October 2003 election and the November 2003 election in
9 at least two counties.

10 MR. KAPLAN: Correct.

11 MR. CARREL: Okay.

12 So you can understand my --

13 MR. KAPLAN: I understand --

14 MR. CARREL: -- my frustration and my anger.

15 MR. KAPLAN: I understand --

16 MR. CARREL: I've got to say, I'm angry because I
17 was led to believe one thing, we determined something else,
18 and it's something where in my mind I'm seeing not only
19 ignoring State rules, you're ignoring federal rules and it
20 puts the question of elections in two small counties but two
21 counties that have their own elections, that have city
22 council election, that have county supervisor elections and
23 I don't know what the difference of vote is and I don't know
24 if someone can challenge it or is concerned about
25 challenging it and so it puts that in jeopardy.

1 MR. KAPLAN: I understand. And what happened was,
2 to the best of our recollection going back a couple of
3 years, that as Bob said, 11720 was what was submitted --

4 MR. CARREL: Right.

5 MR. KAPLAN: -- and when it came out -- and I
6 don't have the specifics on the release notes -- it came out
7 as 11722 and those two counties, big or small, did not get
8 upgraded to what should have come out as 22.

9 MR. CARREL: Well, they shouldn't have had it
10 installed prior to the qualification. I hope you can
11 acknowledge that, that the installation should not have
12 occurred until you received an outside document saying that
13 these are qualified.

14 MR. UROSOVICH: Well, in -- excuse me.

15 In the case of these two particular -- and you're
16 correct going through the process, but a lot of times the
17 certification process and the State mandates and county
18 mandates don't line up in a perfect world. To be able to do
19 voter group two within the State of California which was an
20 ordered procedure within our system to be able to do it by
21 the time you could get through the ITA certification, in
22 some cases the county may have had to begin installing the
23 1720, not just -- it's not an excuse for non-notification
24 but it is a statement of fact.

25 MR. CARREL: And I recognize the ITA sometimes

1 take longer than people would like, but I don't know if
2 staff -- if we have documentation of Diebold making a
3 request for an installation or expediting a certification or
4 review or administratively approving this. I don't know
5 that it occurs and I guess what I'm hearing is it wasn't
6 even made. And that's extremely, extremely problematic
7 here.

8 Let me move on to another issue. The question of
9 the demonstration machine on loan. The fact that there is
10 no -- at least in one county there was no record of the
11 county -- do you keep records of -- first let me ask --

12 Did you want to respond to something?

13 MR. KAPLAN: Yeah.

14 I believe that is the machine we borrowed from
15 Marin County to bring up to show the consultant where to
16 find the various places to check versions.

17 MR. CARREL: Okay.

18 MR. UROSOVICH: That's what I'm told so --

19 MR. CARREL: Yes.

20 MR. UROSOVICH: -- I believe that's true.

21 MR. KAPLAN: So it was our consultants who had to
22 see it and --

23 MR. UROSOVICH: I believe that's what the unit --

24 MR. CARREL: Let me just ask the question, do you
25 not have your own machines?

1 MR. KAPLAN: Well --

2 MR. CARREL: You have to borrow from a county?

3 MR. KAPLAN: -- yes, but --

4 MR. UROSOVICH: The consultant that had asked us
5 to make sure that it was a -- or at least we were led to
6 believe we were to bring a certified system used in the
7 State of California --

8 MR. CARREL: Okay.

9 MR. UROSOVICH: -- and that's something that --

10 MR. KAPLAN: We have an office in Novato. The
11 representative borrowed the machine, drove over here, and
12 that's what the situation --

13 MR. CARREL: Okay.

14 MR. KAPLAN: -- is there.

15 MR. CARREL: Okay.

16 MR. KAPLAN: There was nothing --

17 MR. CARREL: I know there's nothing --

18 MR. KAPLAN: No, no, no. But we were --

19 MR. CARREL: -- no intent to create a problem here
20 but I'm just trying to figure out the record keeping
21 process --

22 MR. KAPLAN: Right.

23 MR. CARREL: And the auditing process to make sure
24 that, for instance, this demo obviously was for our needs
25 and for the needs of our consultant but who's to say that

1 there's not going to be a county loaning it out to -- to
2 whomever because they want to show League of Women Voters,
3 because they want to show the machine to people.

4 MR. KAPLAN: And that does happen in counties --

5 MR. CARREL: Yeah.

6 MR. KAPLAN: And counties, as your consultant
7 said, sometimes will assisted, particularly in the
8 governor's race where people were consolidating precincts
9 and others were scrambling and we were not able to have
10 certification of units and people within the counties --
11 it's pretty common and they do cooperate with each other and
12 we do not have any records, necessarily, on that as the
13 vendor that --

14 MR. CARREL: No.

15 MR. KAPLAN: -- a hundred machines went to here or
16 there.

17 MR. CARREL: No, you keep records of when machines
18 come to McKinny for -- when there is technical problems with
19 the machine and they need to be repaired.

20 MR. KAPLAN: Absolutely.

21 MR. UROSOVICH: Yes.

22 MR. CARREL: Okay. So you keep strict records on
23 that and you keep records of the software that's on those
24 machines and the software thus that needs to be on those
25 machines when they are returned?

1 MR. KAPLAN: Yes, sir.

2 MR. CARREL: Okay.

3 But there is no process by anyone independently or
4 by the counties independently determining that the same
5 machine that was loaned out is the same machine that's been
6 returned and it's been returned the same way?

7 MR. KAPLAN: Well, serial numbers are -- you know,
8 I mean when --

9 MR. CARREL: But no one is checking the software?

10 MR. KAPLAN: Forms are filled out. They're in
11 duplicate, triplicate, et cetera. They go back to the
12 county. The county -- almost every county has it's own
13 inventory control, stickers either put on machines, et
14 cetera, and there is a verification. Now sometimes a unit
15 will come because one of the -- it can not be repaired or
16 it's too expensive to --

17 MR. CARREL: Right.

18 MR. KAPLAN: And that unit would be replaced.
19 Counties -- some of them -- are under maintenance for that
20 and we cover that cost for them but then again that is
21 documented if that serial number is changed and all that is
22 honestly very carefully tracked. The counties all have
23 inventory on that as we do.

24 MR. CARREL: Right. And I believe they need it.

25 MR. KAPLAN: Sure.

1 MR. CARREL: I'm just trying to get a sense of if
2 there's, for instance, one has to be replaced and they sent
3 it by mistake, one that was programmed for Texas elections
4 instead of California elections and one piece of software
5 that's on there shouldn't be, for instance, on a hard
6 system. We had to make sure they don't use a certain
7 version or a certain aspect of that system and there's no
8 protection to make sure that no mistakes are made and my
9 concern is in terms of auditing it.

10 MR. KAPLAN: We would -- we agree with staff's
11 recommendation that more stringent controls should be put in
12 place on our end, on, you know, the agency end and the on
13 the county end. And we keep a record, but it is internal.

14 MR. CARREL: Okay.

15 MR. KAPLAN: I mean to us for our billings, et
16 cetera and I was actually just as a comment I just want to
17 say that the eight units that were back, we're talking about
18 eight out of approximately 18,000 that are currently
19 throughout the State of California.

20 MR. CARREL: Okay.

21 So that leads me to my next question which is if
22 you're saying you're keeping strict record keeping, why were
23 there discrepancies between the information you provided to
24 our consultant on the software installed and optical scans
25 and touch screens -- I guess it was two -- a firmware of two

1 touch screens and optical scan software. How is it that
2 you, who installed the software or the firmware, didn't know
3 what was on those machines?

4 MR. KAPLAN: Are we talking -- I haven't seen the
5 report.

6 MR. KAPLAN: Okay.

7 MR. KAPLAN: Is it two units out of 4,000 or --
8 because that's what Alameda said, that they had a unit that
9 did not have the same. And what the warehouse people told
10 us because we said, how could that happen. They said, well,
11 we don't know. We did -- they themselves did all the
12 upgrades, the vendor did not.

13 MR. CARREL: Okay.

14 MR. KAPLAN: And so their answer to us because
15 honestly we were very shocked when that happened and we
16 didn't know.

17 MR. CARREL: How many counties do you do the
18 upgrades for versus how many counties in California does the
19 county have personnel to do the upgrades? Do you have any
20 idea?

21 MR. KAPLAN: This is just the seat of the pants.

22 MR. CARREL: Yeah.

23 MR. KAPLAN: Most of the large counties do their
24 own and some of smaller ones, for instance Trinity does
25 their own. I think the majority are done by the county.

1 There are some that we do. I'd have to go down, you know,
2 the list to give you the specifics but the vast majority are
3 done by the county.

4 MR. CARREL: Okay.

5 Let me ask about the release notes.

6 We didn't get the release notes until late and so
7 we are going to have to have the technical consultant review
8 it and take some time to do that.

9 I'm -- based on what the staff said and my
10 understanding based on how the numbering occurs, that leads
11 to the question that -- or the supposition that the 11818
12 series is a significant change than the 11717 series.

13 MR. KAPLAN: The biggest change in the 118 series
14 was the ability to handle the new touch screen, the TSx.
15 That was the biggest change. But it also -- because we
16 can't obsolete any of our customers, it also has to operate
17 the optical scan, it also has to be able to conduct
18 elections in accordance with the rules of California.

19 MR. CARREL: Right.

20 MR. KAPLAN: But that's the biggest change to go
21 to the 18 series.

22 MR. CARREL: Okay.

23 Let me ask you, you've heard from the audit
24 reporter -- or from the audit consultant, you've heard from
25 staff -- at least part of her report. She has, I guess,

1 some more to discuss. You've heard my questions and I guess
2 my concerns. What are you doing to address the problems
3 that have been noticed here and that we've found here?

4 MR. KAPLAN: Well, we have put a request into
5 staff. We want to put all counties on the current 11818 --
6 we have requests in to Dawn and John and staff. We have
7 counties that are waiting very anxiously as staff is aware.
8 We read in the paper that was put out that the staff would
9 like to control that and we have -- we agree with that and
10 that's fine with us and we have asked that that happen.

11 MR. CARREL: Right. But I'm talking about your
12 internal processes. You have staff that installed software
13 that wasn't certified and so the notification issue exists.

14 MR. KAPLAN: Oh.

15 MR. CARREL: Okay.

16 You have staff that install software that wasn't
17 qualified and so the question of -- I don't know the
18 question of them taking their own authority to do something
19 without --

20 MR. KAPLAN: Yes. Bob will address that.

21 MR. CARREL: How do you respond?

22 MR. UROSOVICH: That's absolutely right. One of
23 the things that we have found out through the process as
24 well is that our internal processes on version control were
25 regional at best instead of uniformed across the country.

1 When we moved in the new world of touch screen
2 voting and software became more of a bigger part of the
3 process, we were deficient because each of our certification
4 processes were set up at the State level and not the federal
5 and a look across it so we may have been doing things
6 different in California than we did in Utah, that we did in
7 Kansas, that we do in Georgia, we do in Missouri. One of
8 the steps that we took was to formalize that process within
9 our corporate headquarters which are now all certification,
10 all notifications, all enhancements come through one
11 authority within our organization and they are given full
12 power to deal strictly with the State and are regional
13 contrary to some of our past experiences. Our regional
14 network no longer is involved in certification or
15 implementation of software within our counties.

16 MR. CARREL: So your staff regionally is not
17 involved in certification anymore?

18 MR. UROSOVICH: As of the last few weeks they are
19 out of the picture, yes. And to go just one step further,
20 we have -- and that's one of the requests that came from
21 McKinny to the office here was is to make sure that our
22 processes went through the State. We deal in many statewide
23 systems, two to be exact right now that -- where every
24 county is on our system. And when releases are made in
25 those states, they are first given -- directed through the

1 Secretary of State's office who then instructs either
2 ourselves or the county how to receive that update where we
3 don't go directly to the customer ourselves.

4 MR. CARREL: Thank you.

5 MR. UROSOVICH: You're welcome.

6 MR. KYLE: Thank you, Mark.

7 Any other questions for --

8 MR. MILLER: Thank you, Mr. Chairman.

9 I'm not sure this is even an appropriate question
10 -- is my own ignorance. I'm going to talk a little bit
11 about source code and whether the change from 117, 118
12 involved a change in source code and whether -- well, start
13 there.

14 MR. KAPLAN: Yes, it does.

15 MR. MILLER: Okay.

16 Was the 118 -- the change filed with the escrow
17 company as it is my understanding that would be required?

18 MR. UROSOVICH: Yes. Our records show that the
19 filing for the escrow which is an account that I believe
20 three states are involved in, California being one of them,
21 those are always placed within the escrow account upon time
22 of certification.

23 MR. MILLER: Dawn, does the escrow company notify
24 us of the change -- modification -- I just don't know. I'm
25 just asking.

1 MS. MEHLHAFF: It is a -- escrow company does
2 notify us. Sometimes it's not a very fast process but the
3 vendors always list someone and that name is changed,
4 sometimes it's John's name, sometimes it's my name, I've
5 even seen some with your name on it Tony from years ago.

6 MR. MILLER: It would have to be years ago.

7 MS. MEHLHAFF: Yeah. So you're still a contact on
8 some of them but they do -- when Diebold has John listed as
9 the contact in this office, if they issue an upgrade then
10 they will notify us in writing.

11 MR. MILLER: Okay.

12 And this was done with respect to the move to 117,
13 118?

14 MR. UROSOVICH: Yes, our records show that.

15 MR. MILLER: Thank you.

16 MR. KYLE: Any other questions?

17 John? Do you have any?

18 MR. MOTT-SMITH: No, sir.

19 MR. KYLE: Our IT director is gone.

20 Karen, did you have anything?

21 MS. DANIELS-MEADE: No.

22 MR. KYLE: Okay.

23 Thank you, very much.

24 We'll take a second just to --

25 So I think we have a couple more stages here.

1 It's now three o'clock. We've been meeting for almost two
2 hours so, Dawn, why don't you go ahead and go into your
3 recommendations then I'm going to open it up to questions
4 and comments from the audience and I'm going to -- some
5 people took the very smart move of writing it down and I
6 appreciate that, those of you who did.

7 We'll try to move through this fairly rapidly
8 without pushing people too much so that we can hear what
9 they have to say and take note of it.

10 But Dawn why don't you go ahead and --

11 MS. MEHLHAFF: Okay.

12 MR. KYLE: Try to keep it punchy.

13 MS. MEHLHAFF: In terms of recommendations related
14 to Diebold specifically. Staff recommends that the VSP
15 entertain a motion to require Diebold, since we know 11818
16 works and it's been tested at the federal and the State
17 level to require Diebold to fully absorb the cost and to
18 install the most currently certified version of GEMS which
19 is 11818 and all of its California client counties and staff
20 would also specify that that be done on a time line that
21 would be worked out between this office and the individual
22 county to ensure that we don't impact any of their upcoming
23 election time lines but it is our understanding that that
24 stuff can be done within the next week on a relatively fast
25 basis and not impact any of the set up stuff for March.

1 Second point on Diebold. Since some of the
2 requested documentations we mentioned was not received until
3 December 11th, specifically the release notes, staff and the
4 technical consultant still need additional time to review
5 those documentations and to come up with a summary for you.
6 Therefore, staff recommends that the VSP panel should
7 indicate that the review of the inventory of Diebold is not
8 fully complete and that you will consider additional actions
9 at the future time.

10 In regards to voting systems as a whole, as I
11 mentioned we did go back and we looked at our process and
12 staff recommends that given some of the weaknesses that were
13 uncovered in our current review within the 17 counties that
14 you should direct staff and an independent consulting firm
15 to inventory the remaining 41 counties throughout the State
16 and to complete that within a short time frame, hopefully
17 within three months and that inventory would be crucial to
18 developing a baseline for future reviews.

19 In terms of State procedures and how we do
20 business here, we have several recommendations. I know they
21 are in front of you. I can touch on them briefly.

22 The first one is to institute a bi-annual review
23 in which case you would direct staff to establish a program
24 in which we review all county voting systems on a bi-annual
25 basis.

1 To do random audit which would require staff to do
2 random audits of voting equipment to determine what
3 software, firmware and hardware is running at any given
4 time.

5 To do a voting systems accounting process. That's
6 basically tightening up our process here in terms of from
7 start to finish what's coming in, what's going out, what's
8 installed, what's in escrow and those types of things so
9 just to develop more stringent procedures and forms
10 applicable to this process.

11 The fourth one would be distribution of software
12 for installation. Staff recommends that the panel instruct
13 staff to come up with some procedures and guidelines that
14 will allow the Secretary of State to distribute software to
15 the counties for installation removing the vendor from that
16 process and we can work out the details in terms of what
17 that action looks like but to have this offer come here
18 directly from the vendor with a review process between the
19 state and the ITAs to confirm from a trusted source that
20 that software is what it's supposed to be and that the State
21 oversees the installation process at the local level.

22 The pole worker training program is the fifth
23 recommendation and that's just to develop a component to
24 enhance pole worker training components on the operation of
25 voting systems and equipment and to prepare them in terms of

1 looking for violations, looking for tampering and various
2 security provisions associated with that.

3 And the sixth one is to develop a technical
4 oversight committee. This committee would be comprised of
5 experts that would advise this panel and staff on issues
6 related to voting systems security. This committee would be
7 involved in primarily all aspects of the voting system
8 process including the review, review of the procedures,
9 testing and just overall review.

10 The seventh and last item is voting system
11 security funds and that is something that we would need to
12 look at closer in terms of with our legal staff and just
13 proceduralwise but this would be a program in which voting
14 system vendors potentially would pay an annual fee to fund
15 the random audits and the bi-annual review and that's
16 something that we need to just look at in terms of what that
17 -- you know, what the procedures are, forms, costs, those
18 types of things and that may be something that we may want
19 to address after we have completed the rest of the audit
20 throughout the State.

21 MR. KYLE: Dawn, I understand these
22 recommendations are preliminary and that in fact your --
23 considered that the internal review working with John and
24 other staff in other parts of the agency is still to be
25 completed, that we're not fully at the point where we've

1 analyzed every aspect of our operations and found every hole
2 and looked in every dark corner for cobwebs to -- and we're
3 still in that process and more recommendations are -- would
4 be forth coming.

5 MS. MEHLHAFF: Absolutely. And some of these we
6 may get into it once, you know, if you direct staff to
7 forward and to try and flush these out a little bit that we
8 may determine that some of these overlap and that we can
9 maybe replace one with something else but, yes, we are still
10 reviewing our internal processes and trying to come up with
11 some additional recommendations for tying up the process.

12 MR. KYLE: Okay.

13 Any comments or questions regarding the
14 recommendations?

15 MR. MOTT-SMITH: I have just one.

16 MR. KYLE: John.

17 MR. MOTT-SMITH: The consultant indicated that a
18 recommendation that going forward basis that they -- the
19 audit inventory include a component to check for policies
20 and procedures so I think that the third recommendation
21 should incorporate that recommendation and I think we also
22 need to then address how we go back to the 17 and get a
23 complete picture of this data on that level.

24 MR. KYLE: You mean the other --

25 MR. CARREL: Other 41.

1 MR. KYLE: Right. There was 41.

2 MR. MOTT-SMITH: I'm sorry.

3 MR. KYLE: Right.

4 MR. KYLE: They also recommended --

5 MR. MOTT-SMITH: Going forward for the 41 and
6 going back for the 17.

7 MR. KYLE: Right. Correct. For policies and
8 procedures but there was also a recommendation to have
9 better advance notice to the counties, not only just to be
10 courteous but to allow them for proper preparation and as
11 well as providing a more detailed questionnaire so that
12 there could be that proper preparation.

13 Am I rearticulating that correctly? So I would --
14 I think those are three good recommendations as well.

15 MR. MOTT-SMITH: Okay.

16 And I have one more and that's -- it's a -- we're
17 talking about the possibility of the technical oversight
18 committee at the State level to advise the voting systems
19 panel. When we implemented the voting accessibility
20 guidelines for the implementation of the federal law, we
21 made a requirement that each county have an accessibility
22 committee that advised on issues of accessibility. So I'd
23 be interested in the pros and cons of a requirement of the
24 local group of people that also advises at the county level
25 on a voting system.

1 MR. KYLE: Any other questions from the panel?

2 Okay. Before I ask the panel to move forward on
3 this, I'm going to ask them for their opinions but I would
4 like to open the floor to comments and questions to us
5 regarding this presentation and I'd like to just call the
6 folks who have given us their cards and if Kim Alexander
7 would come up I'd appreciate that.

8 MR. CARREL: And Mr. Chair, can I just ask, given
9 the time that we've spent that you limit comment to a three-
10 minute -- or two minutes or something so that we're not kept
11 here all day.

12 MR. KYLE: Okay.

13 Why don't we --

14 MR. CARREL: I know there's a number of people who
15 are asking to speak.

16 MR. KYLE: And we do have a number of people. I
17 don't know if they're all still germane, but if so then we
18 do want to get to them so why don't we say three minutes.

19 MR. CARREL: Can you time that -- would you staff
20 time it, Mr. Chair.

21 MR. KYLE: Michael, is that something --

22 MS. ALEXANDER: Good afternoon. Kim Alexander
23 with the California Voter Foundation.

24 This audit that you have undertaken is tied to the
25 question of whether the TSx machine will be certified and

1 I'm not sure if you want to hear comments about that at this
2 moment or if that process is going to be put over until the
3 full report is issued by your consultants so I'll put that
4 question out there. In the meantime I've got some comments
5 about what was just reported.

6 First of all, I have studied your voting system
7 procedures for approving and certifying California Voting
8 Systems and there are two that I want to bring to your
9 attention. One is 1401 which says that there are
10 maintenance logs that are required. It says each election
11 jurisdiction and voting supplies vendor which has purchased
12 voting systems equipment shall keep a detailed log of
13 maintenance performance and testing procedures for each
14 piece of such equipment in its inventory and it even goes on
15 to explain what the format of the maintenance logs should
16 be. So here is a case where you actually do have something
17 already articulated in your procedures that say that any
18 equipment that goes out for maintenance, sent to McKinny or
19 wherever needs to be kept in a log of that transaction
20 happening by the election jurisdiction.

21 Furthermore, I want to call your attention to
22 Article 15, section 1502, Certificate of Biennial
23 Inspection. The voting system procedures already require
24 biennial testing. It says a biennial test of electronic or
25 computerized voting equipment shall be conducted on each

1 piece of equipment under the jurisdiction of any elections
2 official or vendor of election services and it goes on to
3 explain that there needs to be a certificate of biennial
4 inspection and it's required by Elections Code 19220. So
5 while I'm encouraged to hear the recommendations that have
6 come forward, some of them are new, many of them are old and
7 are things that should have been done and haven't been done
8 and it's a sign of the weakness of our current certification
9 procedures that we have these policies that are very
10 detailed and specific about what's required to be conducted
11 -- to be performed when conducting -- installing voting
12 systems and we're not following them so my concern is that
13 we can come up with new policies but what is going to give
14 California voters the confidence that they need to know that
15 all those policies will be dutifully followed. My questions
16 about the TSx certification relate to whether or not the
17 procedures have been followed. I have requested from the
18 Secretary of State's office and made a Public Records Act
19 request recently as some of you know to receive copies of
20 the several documents relating to the TSx certification and
21 in particular --

22 MS. MEHLHAFF: Time.

23 MR. KYLE: Go ahead.

24 MS. ALEXANDER: Thank you.

25 And in particular I am interested to know whether

1 the Secretary of State has received from NASED or any other
2 federal authority that has the ability to give a stamp of
3 approval or a qualified number that the TSx machine, the
4 hardware and the software has passed federal testing. We
5 heard staff reports and from the vendor at the last VSP
6 meeting that the TSx machine has been completely tested to
7 federal voting system standards for 2002. However, I've
8 heard from other vendors that it is not possible for any
9 vendor to have anything in writing from NASED or any other
10 federal authority stating that someone has been certified --
11 I'm sorry -- qualified to meet the federal standards as of
12 2002. So I made a request in writing for anything that you
13 had in writing that said that and I have not received that
14 and I think it would be irresponsible for the Secretary of
15 State's office to certify especially in light of everything
16 that we've just heard today to certify a new machine for use
17 that has not -- that you do not have something in your
18 possession that clearly states that the software -- and
19 we're talking about 118.18 and the hardware, the new TSx
20 model has passed the federal 2002 voting systems standards
21 as the vendor stated at the last meeting.

22 There are 14,000 units --

23 MR. KYLE: Kim, I let you finish that last one
24 over time.

25 MS. ALEXANDER: Well, when we --

1 MR. KYLE: Good point --

2 MS. ALEXANDER: When the TSx comes up, when you
3 have that discussion I would like to address you again about
4 the TSx in particular.

5 MR. CARREL: If I may respond.

6 I had a discussion with staff earlier, Kim. Asked
7 if documents were available that documented this. They said
8 that if they didn't have them, they were looking for them,
9 they would get copies and so we'll make sure that you get
10 them as soon as we get them if we don't have them yet. But
11 that staff has -- does have documentation with regard to the
12 ITA report; am I correct? That these are all certified and
13 we just can't release the ITA report. It has proprietary
14 information so we're trying to --

15 MS. ALEXANDER: The ITAs don't certify. The ITAs,
16 they make recommendations but it's up to NASED and now the
17 FEC to say, yes, this has passed federal testing.

18 MR. CARREL: We're going to get the documentation
19 you're seeking and I believe it exists or else we wouldn't
20 have even begun the certification process. So we will make
21 sure you have it as soon as --

22 MS. ALEXANDER: You don't begin certification
23 until you get the ITA reports and you have those. But the
24 ITA reports are not what you need to have the federal
25 qualified numbers so that's what I'm looking for.

1 MR. CARREL: Fine.

2 MS. ALEXANDER: Is that from an official --

3 MR. CARREL: We'll continue this discussion and --

4 MS. ALEXANDER: Thank you.

5 MR. CARREL: -- work with our staff to make sure
6 you get what you're requesting.

7 Thank you.

8 MR. MILLER: I have a question.

9 MS. ALEXANDER: Yes.

10 MR. MILLER: Kim, you mentioned 19220. That's the
11 review every two years by the counties or the cities using
12 the --

13 MS. ALEXANDER: Yes.

14 MR. MILLER: -- the equipment.

15 Dawn, was it your recommendation that the
16 Secretary of State make the review or locally make -- I
17 wasn't clear.

18 MS. MEHLHAFF: That's something that we will work
19 out throughout this process but it could potentially be
20 both.

21 MR. MILLER: Oh, okay.

22 MS. MEHLHAFF: These are recommendations we have
23 not --

24 MR. MILLER: Right. I understand that. 19220
25 just relates to the county review --

1 MS. MEHLHAFF: It's by the appropriate election
2 official so I assume that could be either State or county
3 election officials.

4 MR. MILLER: I see. Yeah. Thank you.

5 MS. MEHLHAFF: Thank you.

6 MR. KYLE: Thank you.

7 Is Dennis Paull here?

8 MR. PAULL: Good evening. Thank you for having me
9 address you. My name is Dennis Paull and I'm representing
10 the Common Wheel Institute, a think tank in Menlo Park.

11 I have distributed a four-page letter and I will
12 just try to summarize key points that are on that.
13 Hopefully you all have copies of it. I left them with
14 Breanna this morning.

15 MR. KYLE: Okay. We'll make sure they get them.

16 MR. PAULL: Okay.

17 I have seven points here that I wanted to bring up
18 and in particular these are procedural matters. I know that
19 in time for the '04 elections I know we're not going to be
20 able to get hardware changes so I think in order to overcome
21 some of the weaknesses of the existing hardware, we need
22 some procedural changes and I've listed seven.

23 First is that the election results that come from
24 each precinct need to be made public as soon as possible and
25 in hopefully the numbers that come directly from the

1 machines in the precincts before they're connected to any
2 other election system, before they go on line in any sense
3 so that they are as much as possible the real hardware, raw
4 data. They need to be posted at the precinct level which is
5 required by the Code but is not carried out by the counties
6 in every case. And further, they should be posted by the
7 county in a format similar to the statement of vote that
8 will come out after all the special cases have been handled.

9 Second, that no voting machine should be on line
10 between the L&A testing and the close of the poles. So the
11 L&A testing typically is a week or so before the poles and
12 we want to make sure that none of those machines --there's
13 any opportunity for modifications that take place during
14 that period of time.

15 Third item. This is very important. This has to
16 do with the manual recount. The manual recount is supposed
17 to be a random choice of precincts, one percent plus
18 additional precincts so that all districts are covered by at
19 least one. It's critical that the choice of the precinct,
20 the selection of the precinct numbers take place after the
21 poles close. If there is random choice of precincts that is
22 done beforehand, it essentially negates the whole concept of
23 the random choice because they're no longer random. The
24 individual precincts could be modified if it's known in
25 advance so it's critical. And furthermore, I think the

1 selection process of which precincts are chosen should be
2 done in a public manner, hopefully with the representatives
3 of the candidates --

4 MS. MEHLHAFF: Time.

5 MR. PAULL: I have a couple of other points but
6 they're in the letter and I hope you can address them all.

7 MR. KYLE: Thank you very much. And we'll make
8 sure that letter is distributed to panel members and entered
9 into the record as well as distributed to the Secretary.

10 Deborah Hench.

11 Welcome and please come on up.

12 MS. HENCH: I'm Deborah Hench, San Joaquin County
13 registrar of voters.

14 I initially wanted to answer the questions you had
15 about the inventory system and how we handle it because all
16 of the counties since we've gotten -- and we're still in the
17 process of setting up our touch screen -- have realized that
18 we need to get more detailed information in our inventory
19 systems and therefore with all are either implementing new
20 inventory systems or upgrading. We're implementing a new
21 one and this will track by serial number every unit that we
22 have and it will track every time we service it, where it's
23 located and when it's sent to the polling place, when it's
24 returned from the polling place and that way we can at any
25 given time work up a report, know when it's been serviced,

1 know when it's been sent out, whether it's in demonstration,
2 whether it's been sent back to the company for maintenance
3 or whatever.

4 Now all of us are in that process of no one has
5 initially tried to not have those reports but a lot of the
6 times when you get new equipment in you don't have the
7 inventory system set up the way you want it to until you've
8 already sent it out one time and you realize you need more
9 data.

10 Now the other gentlemen he asked for several
11 things that at this point I should tell you how it operates
12 with touch screen voting and optical scan voting, doesn't
13 matter which one you do. We don't have the ability to post
14 a statement of vote at the polling place election night.
15 Now we do have summary results for that precinct that comes
16 back with the memory parts and it doesn't matter which one
17 it is. It doesn't matter if it's touch screen or if it's
18 optical scan. It all has some kind of memory card that is
19 transported either to a central location or receiving
20 center.

21 We then -- we have that piece of paper for that
22 particular unit, for that precinct that we use in the
23 canvass. When we run our audits we put our statement of
24 vote from election night which we do assemble, you know,
25 once we report. It's our unofficial statement of vote and

1 in the canvass we print and we never select the precinct
2 until after close of poles. We want to verify. We have a
3 close race and any particular precinct or area we make sure
4 we pick those precincts that we need to manually hand count.
5 And I'm sure that most of the county registrars do the same
6 thing. It helps eliminate any chance of having to do a
7 recount of the whole district.

8 We then audit by looking at the printout, using
9 the manual because the printout of the summary report has to
10 match what the rosters of people signing in along with the
11 number of --

12 MS. MEHLHAFF: Time.

13 MS. HENCH: -- votes cast and those are already
14 procedure set up.

15 MR. KYLE: You want to wrap up, Ms. HENCH.

16 MS. HENCH: Well, I just want you to know that the
17 Secretary of State should know that every county registrar
18 in this State has procedures in place. We do not -- you
19 know, we're out there on the line. We meet the voters and
20 we're there to assure that they do count and we put in way
21 too many hours to disrupt an election.

22 Thank you.

23 MR. CARREL: Can I ask a question?

24 MR. KYLE: All right. Go ahead.

25 MR. CARREL: I am not questioning the county

1 clerk's ability to manage elections. As the secretary said
2 earlier, I think he commended the clerks in the State. I
3 guess my concern is that the procedures aren't as -- that
4 every county is setting up different procedures and I don't
5 know whether there should be standardization, particularly
6 there are procedures from each vendor and we're not -- we
7 don't have the information so -- so we need, I guess,
8 greater communication with the counties, greater
9 communication with the vendors and then the vendors and
10 counties are talking and so I think that gives us a better
11 sense and clearly there are some counties that are further
12 advanced on the procedures than other counties and usually
13 the ones with the more advanced equipment have to be but I
14 don't know if that's the case and I think we need to do
15 further examination there.

16 MS. HENCH: I'm not saying that, you know, we
17 should not look at any one --

18 MR. CARREL: Um-hum.

19 MS. HENCH: -- or all of us. I'm just saying that
20 what you'll find there are lot more procedures in place than
21 the perception is.

22 MR. CARREL: I see.

23 Thank you.

24 MR. KYLE: Thank you very much.

25 Greg from San Rafael. I can not make out the last

1 name.

2 MR. DINGER: Good afternoon.

3 My name is Greg Dinger. I am a registered voter
4 in Marin County. Three points.

5 I was asked by the Secretary of State's office
6 earlier, a month or so ago, concerning my personal knowledge
7 of the use of cell phones to transmit the results of scanned
8 ballots in my precinct and I personally witnessed use of
9 that telephone -- the telephone that was to be used and I
10 have a friend who was a pole worker who personally witnessed
11 the use of that telephone. I was told that the use of cell
12 phone to transmit results was not certified and I was
13 curious as to the disposition of that.

14 MR. KYLE: Mr. Dinger --

15 MR. DINGER: Yes.

16 MR. KYLE: Are your comments going to address the
17 Diebold issue that --

18 MR. DINGER: Well, this was Diebold --

19 MR. KYLE: Because just for the record, we
20 received that. I remember seeing your communications on
21 that and I think it was forwarded to our fraud investigation
22 unit or the election division but I could follow up on that.

23 MR. DINGER: My second statement would concern the
24 testimony today that minor version bumps would typically
25 represent minor bug fixes, spelling errors. I am one of the

1 many people on the internet who have had the opportunity to
2 read Ken Clark and several oath Diebold staff e-mails and
3 there is a particular e-mail in there where Ken Clark
4 indicates that there is a database upgrade that was
5 necessitated by changes requested by the State of California
6 and that with the short time frame before the election he
7 recognized that even though this version -- this
8 modification would require major version bump and
9 recertification that he'd never get that through so in his
10 words, if -- what are rules for if you can't bend them once
11 in a while and he did indicate in this e-mail that he was
12 going to install what should have been a major software
13 version bump, a major recertification as a bug fix. So the
14 testimony of that spelling error could be -- I challenge
15 that. I challenge that. I've been a programmer for 30
16 years. I can easily see the way that this stuff just slips
17 through so as you're checking, what's the difference between
18 1717 and 1718 or 1818. I implore you, look at the code.
19 Look at the source. See what's different. Don't just
20 believe them because the e-mails bear witness to the fact
21 that these people --

22 MR. WAGAMAN: Time.

23 MR. DINGER: The third point I'd make is that Bev
24 Harris of Black Box Voting had a major press conference in
25 Seattle today and the information that she released was of

1 grave circumstances.

2 MR. KYLE: Thank you very much. We'll take a look
3 at that and your comments are duly noted.

4 We were aware of that last point and we're waiting
5 to get information on that.

6 Joseph Holder.

7 MR. HOLDER: Good afternoon.

8 Before I start anything I do want to say I really
9 appreciate Secretary of State Kevin Shelley coming down here
10 and emphasizing how much importance he gives to this whole
11 issue and I very much appreciate the questions that I've
12 seen today and heard today and the response and so on.

13 I am, and I know many other people are also very
14 pleased with what's going on right now. That we really need
15 to shine the light of day on this whole issue and that too
16 much of this has been going on too far in the past without
17 having as much input or scrutiny as it should have.

18 I did want to thank Secretary of State Kevin
19 Shelley for his recent actions and including the requirement
20 for a voter to be able to verify their choices by a printed
21 record and that printed record be available for the required
22 mail audit and also in case of the recount and that I
23 consider that a very foundational -- to any public
24 confidence in electronic voting.

25 I was going to talk on the TSx today but in

1 relationship to the TS system because at the last meeting it
2 was pointed out that TSx was just a minor modification of
3 the TS system and so it's very important that, you know, the
4 TS system be looked at more carefully. What I've heard
5 today, I think that the staff now is going to be looking at
6 that very much more carefully now and I'm looking forward to
7 the full report.

8 One thing that did come out in the last month, in
9 fact on November 21st was the Ohio report by Compuware that
10 was alluded to earlier and I was very glad to hear that
11 brought up by Bob Kibrick.

12 I'll just really that quickly, a area regarding
13 that.

14 MR. KYLE: We have your letter.

15 Thank you very much. So anything you miss we've
16 got it and we'll put it in the record.

17 MR. HOLDER: Okay.

18 And I would also agree that -- with Greg, what I
19 heard today is I read also that memo and that also was also
20 forwarded to the Secretary of State's office, that same memo
21 talking about that.

22 The other that's not in here was that other fax
23 that I did send in where it was talking about the -- a
24 Diebold technician being able to access the GEMS server in
25 Alameda County through his laptop from the precinct. I find

1 that very troubling. And this whole area of GEMS or the
2 tabulating software as being able to be altered and I would
3 not want to see any further --

4 MR. WAGAMAN: Time.

5 MR. HOLDER: -- use of GEMS without addressing
6 that high risk security issue.

7 MR. KYLE: Duly noted.

8 MR. HOLDER: Thank you.

9 MR. KYLE: Thank you very much.

10 Robert Kibrick.

11 MR. KIBRICK: I also have some formal remarks but
12 in the interest of time if I could submit those --

13 MR. KYLE: Great. Thank you.

14 MR. KIBRICK: -- I'll just try and --

15 My name is Robert Kibrick. I'm a registered voter
16 from Santa Cruz, California. I also serve as the Director
17 of Scientific Computing for the University of California
18 observatory, Lick Observatory. I am here as a private
19 individual and the views I present here do not reflect those
20 of my employer or any other group that I'm associated with.

21 I'd like to second Mr. Holder's comments and to
22 express my appreciation to Secretary of State Shelley both
23 for his appearance here today and for the actions that he
24 announced in November requiring a voter verified paper audit
25 trail. And these are all covered in detail in my written

1 comments.

2 What I heard here today I find truly appalling as
3 a California voter that we seem to have a situation where we
4 have had very wide scale deployment of machines in advance
5 of adequate procedures at the State and county level to
6 track versions and provide any sort of meaningful version
7 control or in cases where there may have been procedures,
8 those were neither followed nor enforced. And I think this
9 in addition to many of the other security concerns that have
10 been raised in the Johns Hopkins, the SAIC and more recently
11 the Ohio report have really shaken the confidence of voters
12 in the integrity of these machines and in the integrity of
13 the overall election process.

14 I find it particularly troubling that in each of
15 these cases where you had a research study that revealed
16 major deficiencies in the design, major vulnerabilities in
17 the security of these systems that these were all machines
18 that had been passed through the independent testing
19 authority, that had been certified by the federal
20 government, certified by the State government and despite
21 all of that certification effort these machines went through
22 with numerous problems that were identified as serious.
23 That to me does not inspire confidence in these machines or
24 the procedures or methods by which they are certified and
25 clearly adopting stricter procedures and standards are

1 recommended both in the Ad Hoc Touch Screen Task Force
2 Report and as requested by Secretary Shelley is long
3 overdue.

4 In the meantime I am wondering why we are
5 continuing to conduct our upcoming elections on such
6 machines. The State of Ohio has come to the conclusion that
7 they're going to defer the deployment and use of these
8 machines until these problems are corrected. So why doesn't
9 California do this? Why do we not temporarily suspend the
10 use of such vulnerable equipment until such time as the
11 vendors have demonstrated and the State has verified and
12 verified in an open and public way that these deficiencies
13 noted in these various research reports have been corrected.
14 Why does not California undertake it's own security audit of
15 these machines? Why do we continue to put our votes and the
16 integrity of our electoral process --

17 MR. WAGAMAN: Time.

18 MR. KIBRICK: -- at risk.

19 Okay. Thank you.

20 MR. KYLE: Thank you Mr. Kibrick.

21 And make sure our transcriber doesn't walk away
22 with the only copy of that so we can --

23 MR. KIBRICK: I have some other copies here.

24 MR. KYLE: Great. That way we can make copies.

25 And while we're dealing with that, Jim March, I

1 believe you're --

2 MR. MARCH: Thank you very much. I'll be brief
3 and have on topic.

4 First of all, I'm very concerned about reports of
5 the version numbers changes being so-called minor throughout
6 version 1.17, 17 up through 23 and then into the 18 series.

7 I have down -- you can go to my web site, you can
8 download copies of GEMS 1.1715, 11723 and 11817. These are
9 a good selection of the various versions out there. Each
10 one comes with a bug tracking list which describes the
11 changes between all the version numbers, not just their own
12 and they agree with each other up through their own
13 versions. In other words, the bug list for 11723 and 11817
14 match perfectly up through 11723. The moment I get home
15 I'll be glad to e-mail you these and you can see just how
16 extensive the changes are between the various versions.
17 We're not just talking about spelling changes here, no way.

18 Also, the sizes of the various packages are way
19 off. These things grew in size in some cases by megabytes
20 so there are significant changes to the program code. I
21 don't have the source code for these, I've only got definite
22 and known good executables but there are big difference.

23 Another thing you should be aware of, 118.14 was
24 in use in Alameda County on October 28th, 2002. Now that's
25 significantly before anybody was talking much about the TSx

1 box and if they were already up to 11814 then I find it very
2 hard to believe that 118 series was developed for the TSx.
3 That just doesn't make sense unless there were a huge number
4 of version changes between 118.0 and 11814. Something's
5 wrong there folks. Look, the sheer number of corporate
6 ethics failures that Diebold has recorded as being involved
7 in is now so extreme that you've got to vote them off the
8 island. It's time to completely decertify Diebold and if
9 you don't there's no credibility left in this board, in this
10 department. The latest scandal from just a few days ago is
11 one of the internal memos was quoted in Maryland. One of
12 these guys said, here it is and I'll leave this with you,
13 Diebold e-mail discusses price gouging in Maryland and the
14 term, "make them pay up the yin-yang" is used by a Diebold
15 employee referring to how the State should pay for a voter
16 verified paper trail in order to discourage the use of voter
17 verified paper trails. For crying out loud guys.

18 I'll leave you with one more thought. You're
19 finally starting to realize that there are ethics violations
20 on Diebold's part. It's hard to escape that with the recent
21 report just released.

22 MS. MEHLHAFF: Time.

23 MR. MARCH: Thirty seconds, if I could.

24 MR. KYLE: Fifteen.

25 MR. MARCH: Okay.

1 MR. KYLE: It's a deal.

2 MR. MARCH: You need to rethink that whole issue
3 of Windows CE and here's why, Diebold defrauded the federal
4 independent testing authority, Wyle Labs, and convinced them
5 that Windows CE was commercial off the shelf software when
6 it is not; okay? They have released thousands of lines of
7 custom code that has never been certified. They defrauded
8 the certification process.

9 MR. KYLE: Thank you. Duly noted. We appreciate
10 it.

11 Okay. I want to move into the next steps here to
12 try and wrap this up.

13 We have a recommendation before us from the staff
14 and there were a couple of other suggests by John Mott-Smith
15 to incorporate the recommendations of R&G in terms of
16 communications with the county both in a timely fashion and
17 more detailed fashion as well as to look at policy and
18 procedure both on a proactive and a retroactive basis for
19 the 17 counties that are being -- am I rearticulating that
20 properly?

21 MR. MOTT-SMITH: Perfectly.

22 MR. KYLE: So I think at this point in time it's
23 appropriate to entertain a motion from panel members to go
24 forward. I know we have not only recommendation but the
25 issue of the certification in front of us so someone like to

1 make a recommendation?

2 MS. DANIELS-MEADE: I move adoption of the
3 recommendations from staff.

4 MR. KYLE: Okay.

5 Do I hear second?

6 MR. CARREL: Second.

7 MR. KYLE: Okay.

8 MR. CARREL: No time for discussion?

9 MR. KYLE: Some discussion among panel members?
10 There's been a lot of discussion already.

11 Okay. So let me rearticulate what I believe is
12 the motion. That we and --

13 Let me also seek a point of clarification. Right
14 now the recommendation is that Diebold should be required to
15 install the most current version of GEMS software, one point
16 one eighteen point eighteen, in all the California client
17 counties and a time line established between the counties
18 and the Secretary of State's office to absorb those costs.

19 Two, that considering that we received data in a
20 not timely fashion at the very end of last week we're
21 therefore reviewing it that additional time is needed for
22 that review and an analysis coming out of that so it seems
23 like we're not quite -- we don't have a final version of
24 that.

25 Third, that we go forward and audit the other 41

1 counties with the recommendations added on regarding R&G and
2 communications with the counties and policy and procedure
3 and then the seven procedures generated from looking at the
4 deficiencies of our operations at the SOS, the biennial
5 review making those real random audits, voting system
6 accounting process, making those real. The centralization
7 of distribution of software for installation, pole worker
8 training, technical oversight committee which overlaps with
9 recommendations and a directive which already comes out of
10 the Touch Screen Task Force mandate and a voting system
11 security fund, looking into that.

12 Some of these obviously could be implemented
13 immediately, others would need to wait.

14 Now I want to just dwell on the second part of the
15 first section. It seems to me if we're still trying to
16 analyze the data that there could be more -- and a number of
17 people commented on this as to the significance of the
18 various versions and whether it's significant or
19 insignificant and without actually looking at that and
20 analyzing it it's hard to say at this point in time so it
21 seems here we're going to need to reconvene to discuss that;
22 does that seem --

23 MR. MILLER: Yes. Absolutely.

24 MR. KYLE: Yeah? Okay. All right.

25 So we're not quite there in terms of the full

1 implications of what -- what exists. Having said that it
2 would be my recommendation to the motion maker that we
3 continue the conditional certification and do not lift the
4 condition pending the result of that finished analysis and
5 review and as the Secretary mentioned whether any types of
6 sanctions and how severe they might be as a consequence of
7 that review and certainly learning what we learned today
8 with regards to how widespread the installation of
9 uncertified and unofficial software is, I agree with you,
10 Marc, the concern is greater now than it was a month ago.

11 So if that's acceptable as a friendly amendment --

12 MS. DANIELS-MEADE: Absolutely.

13 MR. KYLE: Any other comments?

14 MR. CARREL: I have a few.

15 Did you expect anything less?

16 First of all, on the 41 counties going forward
17 with the audits on the 41 counties I would suggest that we
18 implement or at least document the software as it's known by
19 those counties immediately so that no installation occurs
20 either inadvertently or intentionally before our auditors go
21 and determine what software is on there so I would like
22 information provided to all the counties telling them that
23 nothing should be installed without our knowledge and that
24 we would like to find out what versions of software they're
25 using at this point. That can be confirmed by the auditors

1 but I think there's a form send out that was requesting
2 information. I think we should do that and put the vendors
3 on notice and counties on notice that per the Election Code
4 notification has to occur when anything is certified and
5 that we're going to do audits to make sure that any upgrades
6 are consistent with certified software, hardware and
7 firmware.

8 I agree that further review needs to occur. First
9 of all let me just say I started this a month ago when I
10 said there was disconcerting information. I am disgusted
11 really where we are right now and I think that we have to do
12 a much more comprehensive review not only the information
13 that came in the release notes -- and I'll share, I've got
14 single-spaced, every line on almost six and a half pages so
15 there's a lot of information here to review and to
16 understand and with regard to, you know, whether it's the
17 change of a name or not, clearly it's more than that. But
18 whether each change here, you know, enabled the return
19 control to the invoking window -- I don't know what that
20 means and I don't know that we're going to have a full sense
21 of that until our technical consultant reviews it and I
22 think we need that report back from our technical
23 consultant.

24 I was struck based on my conversations or
25 questioning of the representatives from Diebold today that

1 they -- you know, they just acknowledged it. They said, you
2 know, we did it. You know, the Secretary spoke about the
3 integrity of the election process. Individuals spoke about
4 the integrity of the election process. When I heard about
5 the federally -- or the non-federally qualified software
6 being installed and that it exists on three counties in the
7 State, including the largest county in the State, I really
8 felt that the vendor may not understand that we run the
9 elections in this State and I think that that's something
10 that we have to convey not only to them but to every vendor
11 and to every county. We set the standards for certification
12 and we set the standards for the technology that's used and
13 that's our role. And ignoring that role is serious. And
14 I'm frustrated -- I'll say this to the other members, I'm
15 frustrated that we're not going further today. I don't know
16 what further means. The Secretary mentioned decertification
17 proceedings. I agree with him. I don't know that we want
18 to go there. It has tremendous impact not only on the
19 vendor but on counties that have -- that are relying on a
20 system for an up coming election and I don't think -- I
21 don't know what we can do or what we have to do and I think
22 that that needs to be explored. There certainly needs to be
23 something done to this vendor from this panel from this
24 agency. We're acknowledging the mistakes that we've made.
25 We're trying to correct them with these staff

1 recommendations to make sure that our side of this process
2 and our oversight of certification and our oversight of the
3 technology is as tight as it can be from our perspective.
4 We have to make sure that vendors understand that we run the
5 certification process in the State and that they have to
6 follow those rules and then to find out that they didn't
7 even file federal qualification procedures. Really, it does
8 disgust me that they would go and install it and say -- and
9 we never installed another version without acknowledging
10 they shouldn't have installed it to begin with. They
11 shouldn't have installed 1720 to begin with because it
12 wasn't even looked at by the federal government or the
13 federal independent testing authorities. The vendors don't
14 run elections in this State and they're not student council
15 elections we're talking about. We're electing governors,
16 we're electing presidents and I think we have to ensure the
17 integrity of the votes that are counted and so I really
18 think we need to go further and I think that needs to be
19 discussed at the next meeting.

20 I recommend that we come back 30 days from now.
21 There's other items that we should notice, particularly the
22 recommendations and procedures regarding the voter verified
23 paper trail pursuant to the request made by the Secretary
24 for us to adopt or recommend procedures. I think that
25 should be noticed and so I think that the closest date we

1 can choose is the 14th of January. I would recommend that
2 we come back the 14th of January to hear this and to find
3 out more.

4 I would like us to investigate some of the points
5 that were brought up by some of the people in public
6 comment, particularly the accessing of the Alameda server by
7 Diebold employee and I don't know how we can do that but I
8 think that should be examined and any of these other
9 documents. Now some of them may not be valid but they may
10 be valid and I think they have to be examined in this
11 context of whether this vendor, other vendors are doing
12 things on their own without -- without response to State law
13 or federal requirements.

14 You know, the president of Diebold today
15 acknowledged they were negligent. I think we have to
16 examine this and determine whether they did it knowingly and
17 there may be documents out there that would determine this
18 and, you know, if it comes to forwarding this information to
19 the Attorney General's office or to a DA's office, it may
20 come to that. I'm not above doing that. I'm not above
21 recommending it and clearly part of that is going to come
22 out of what we determine and so I would ask that we hold --
23 keep an open mind on any recommendations for next month
24 beyond these recommendations today.

25 MR. KYLE: I think that's appropriate. I also

1 think that along those lines we could direct staff to
2 ascertain what appropriate consequential actions might --
3 might derive from whatever we determine and what -- within
4 our authority.

5 So we're going to add January 14th? I think
6 that's a good recommendation. That gives us a time certain
7 and considering the holidays, you think that's --

8 MS. MEHLHAFF: Staff would ask that you give us
9 leniency within a day or two because we have to prepare the
10 agenda and we do have some other items we need to add to it.
11 So not to say we can't do it the 14th but by the time staff
12 gets it to you for your approval we may have to look at the
13 15th --

14 MR. KYLE: Okay. Well we're --

15 MR. CARREL: There's calendaring issues with the
16 15th and 16th but I think we should talk --

17 MR. KYLE: We'll schedule it for the mid-January
18 and we'll direct you to do the mid-January.

19 But there's still a motion on the floor. It's
20 been seconded. I'd like to call the question unless there's
21 no comments from the panel members?

22 MR. MILLER: Well, Mr. Chairman, I think -- I
23 would like to have a response from Diebold with respect to
24 installing 11818. I mean, any comment with respect to that?
25 I mean, that's one of the recommendations.

1 MR. KAPLAN: What's the question? I'm sorry.

2 MR. KYLE: One of the suggestions and rather one
3 of the recommendations we're about to vote on is that
4 Diebold installed 118118 -- I mean 11818 and absorb the
5 costs in those counties. If I'm not mistaken that's
6 something -- that coincides with something that you -- you
7 folks already said.

8 MR. KAPLAN: Right. We have made that
9 recommendation. Counties need to be laying out their
10 ballots.

11 MR. KYLE: Um-hum.

12 MR. KAPLAN: They're going to the printers here in
13 literally 10, 12 days.

14 MR. KYLE: Right.

15 MR. MILLER: And you would absorb the cost of
16 installation?

17 MR. KAPLAN: Oh, yeah.

18 MR. MILLER: Fine. That's all I need
19 Mr. Chairman.

20 MR. KYLE: Okay.

21 Any other comments? Questions? Clarification?

22 All right. I'd like to call the question.

23 All in favor of the motion?

24 All those opposed?

25 Any abstentions?

1 The ayes have it.

2 So we have a meeting on the 14th, a follow-up on
3 this report and we'll engage in communications on a go-
4 forward basis with the 41 remaining counties. The 17 we'll
5 look at retroactively in terms of policies and procedures.
6 We'll immediately notify the counties --

7 MR. CARREL: And so the installation of 11818 will
8 occur as soon as possible so that those counties can begin
9 the layout and the auditing of the other 41 would begin
10 immediately so that we can get a sense of what's installed
11 currently; correct?

12 MR. KYLE: Correct.

13 MR. CARREL: Okay.

14 I know this is not on the agenda, but the
15 Secretary did send a letter to you Mr. Chair and with regard
16 to the -- his adoption of the directive regarding voter
17 verified paper trail and the -- his directive that we adopt
18 -- we examine a whole list of items such a paper trail and
19 we create procedures pursuant to that letter and to his
20 directive and the Touch Screen Task Force Report. I
21 guess -- suggest that we place this in the record and then
22 on the 14th with notice we place the review of procedures
23 that are created by then as an item on the agenda.

24 MR. KYLE: Okay. I think that's a good idea. We
25 could also make that available -- it's already available on

1 the web; is it not?

2 MR. CARREL: Correct. It's available on the
3 Secretary's web site but I would just include it so that
4 there's notice about what's coming up, that we will be
5 dealing with the next --

6 MR. KYLE: Can you identify it for our transcriber
7 so we can --

8 MR. CARREL: I can give him this copy.

9 MR. KYLE: -- put it in the record appropriately?

10 MR. CARREL: Okay.

11 MR. KYLE: And then we'll also make a link to it
12 from the VSP web site to that.

13 MR. CARREL: Great. Thank you.

14 THE REPORTER: Do you want to identify that as an
15 exhibit?

16 MR. KYLE: We'll call it the November 21st letter
17 to Mark Kyle and Marc Carrel directed from Secretary of
18 State Kevin Shelley.

19 MR. KYLE: Okay.

20 The meeting is adjourned. Thank you very much.
21 Appreciate everyone coming.

22 (Whereupon at 3:55 p.m. the meeting was
23 adjourned.)

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25

CERTIFICATE OF REPORTER

I, ALAN MEADE, do hereby certify that I am a disinterested person herein; that I recorded the foregoing hearing on a tape recorder; that thereafter the tape recording was transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, or in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of December, 2003.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345